Comment Summary and Responses
Ballona Creek and Ballona Creek Estuary Metals TMDL
July 12, 2004 Draft

1. Donald L. Wolfe, County of Los Angeles, Department of Public Works
2. Tracy Egoscue, Santa Monica Baykeeper (Baykeeper)
3. Rita L. Robinson, City of Los Angeles, Bureau of Sanitation
4. Rod H. Kubomoto, County of Los Angeles, Department of Public Works
4.a. Gerald E. Greene and Eduard Schroder, City of Downey and TECS Environmental
5. Michael Flake, California Department of Transportation (Caltrans)
6. G. Scott Koken, Southern California Gas Company (So Cal Gas)
7. Timothy Piasky, Construction Industry Coalition on Water Quality (CICWQ)
8. Jerry Livingston, Building Industry Association of San Diego et al. (BIASD)
9. Michael J. Rogge, California Manufacturers and Technology Association (CMTA)
10. Shelley Luce, Heal the Bay (HTB)
11. Wynn Miller, Wynn Miller Photography (Miller)
12. Mike Wang, Western States Petroleum Association (WSPA)
13. Sarah Connick, Sustainable Conservation/Brake Pad Partnership
14. Heal the Bay member form letters (sample comment letter and list of individual commentors)
15. Richard Montevideo, Rutan & Tucker, representing CPR cities (comments on LA River Metals TMDL incorporated by reference into the record for Ballona Creek Metals TMDL at the September 2, 2004 workshop)

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1.1	County of LA Public Works	8/16/04	The County requests a 90-day extension of the public comment period.	The item proposed for Board action at the September 2, 2004 Board meeting was

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				changed to a workshop and action on the item was continued. The proposed Basin Plan Amendment (BPA) and staff report have been revised to reflect comments and re-noticed to allow additional public comments on the proposed changes. At the public workshop, interested persons were notified that there would be an additional comment period. Interested persons have therefore had nearly a year to consider and comment on the proposed TMDL and its underlying methodology.
2.1	Baykeeper	8/25/04	The TMDL should require compliance with the dry weather limits in less than 10 years.	50% of the total drainage area served by MS4 system shall achieve compliance with the dry-weather WLAs six years after the effective date of the TMDL.
2.2	Baykeeper	8/25/04	The TMDL should require a thorough storm drain, discharge, and a small drain study to know all potential sources of discharge that can lead to the creek.	During the summer of 2003, three snapshot sampling events were conducted jointly by the Santa Monica Baykeeper volunteers, SCCWRP, the City of Los Angeles, the County of Los Angeles, and Regional Board staff. Subsequent analysis of the data including the dry-weather model concluded that the flows from approximately 9 drains and tributaries determined the in-stream metals concentration in Ballona Creek. The existing data do not support the need for a comprehensive drain study. However, a

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				source tracking program was one of the non-structural BMPs suggested in the Implementation Section of the TMDL.
2.3	Baykeeper	8/25/04	Ballona Creek Watershed Task Force (BCWTF) Management Plan includes a community based monitoring effort whose data should be taken into account during the re-opener.	All applicable monitoring data that is made available to the Regional Board staff will be considered prior to the re-opener. Regional Board staff appreciate the efforts of the BCWTF and look forward to receipt of the monitoring data.
3.1	City of LA	8/25/04	Stormwater and urban runoff requirements should be implemented as best management practices (BMPs), or source control requirements. The City requests that all references to numeric limits for evaluation of compliance by MS4 stormwater programs and Caltrans be removed from the BPA and staff report, as there is insufficient evidence that numeric limits for storm water can be feasibly attained or scientifically monitored.	The implementation section of the proposed BPA and staff report have been revised to clarify how waste load allocations will be translated into NPDES permits. The revised BPA and staff report reflect the expectation that storm water permit writers will translate waste load allocations into permit limits in the form of BMPs. Permit writers must provide adequate justification and documentation to demonstrate that specified BMPs are expected to result in attainment of the waste load allocations.
3.2	City of LA	8/25/04	All references to "compliance points" should be replaced with "TMDL effectiveness monitoring points" to be determined during the development of the monitoring plan.	All references to "compliance monitoring" have been changed to "TMDL effectiveness monitoring" in the proposed BPA and staff report.
3.3	City of LA	8/25/04	There is a need to clarify the maximum amount of volume or storm event size that MS4 dischargers are expected to capture and treat. It is not feasible to try and manage stormwater from extreme events, because the volume of water is so large, nor is it necessary to meet numeric	Staff will address the issue of defining a maximum volume or storm event size through the wet-weather task force, which they committed to establishing as part of the

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			water quality objectives at all times, because acute and chronic objectives allow exceedances of numeric objectives at frequencies of once every three years or longer.	Triennial review. Based on the task force's recommendation, staff will bring the definition of a storm that will address multiple TMDLs to the Board for their consideration as a Basin Plan amendment.
3.4	City of LA	8/25/04	It is difficult to understand how the load capacity curves will be used to determine wet-weather compliance, and what actions should be taken if found to be out of compliance. Modify the BPA and staff report so that load capacity curves will not be used to determine compliance by MS4s and Caltrans, instead define wet-weather compliance as management of smaller more frequent flows to the maximum extent practicable (MEP).	The BPA and staff report have been revised to include equations that describe load capacity curves and allocations. If the TMDL effectiveness monitoring shows exceedances of waste load allocations, the MS4 and Caltrans storm water permits will be revised in the next permit cycle to incorporate additional requirements to achieve compliance with the waste load allocation. The removal of references to "compliance monitoring" in the BPA and staff report clarify that the TMDL is not self-executing and that the MS4 and Caltrans permittees will not be subject to enforcement actions if waste load allocations are not met. Permittees must only demonstrate compliance with their permit limits, which will be set to meet the waste load allocations.
3.5	City of LA	8/25/04	Draw the loading capacity curves on a normal scale, not a log scale, so that the magnitude of the mandated load reductions is apparent to non-scientists.	The proposed BPA and staff report have been revised to better describe the load capacity curves. The curves are expressed as load per daily volume, rather than per rainfall event, eliminating the effects of the

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				spatial variability of rainfall. The curves are now presented in the implementation section of the revised staff report. However, the curves are still presented on a log scale, as loads vary over orders of magnitude and cannot be clearly seen on a normal scale.
3.6	City of LA	8/25/04	Due to the larger number of stakeholders we require at least 24 months after the effective date to draft the compliance plan and 30 months after the effective date to finalize the plan.	The stakeholders for the Ballona Creek watershed include the City of Los Angeles, Beverly Hills, Culver City, Inglewood, Santa Monica, West Hollywood, the Los Angeles County and Caltrans. The proposed BPA and staff report have been changed to allow 18 months for a draft plan and 24 months for the final implementation plan.
3.7	City of LA	8/25/04	Due to the larger number of stakeholders than the recent Santa Monica Bay Bacterial TMDL, the development of a monitoring plan is expected to take longer then 120 days, as specified in the TMDL. We request 12 months after the effective date to submit the monitoring plan.	The proposed BPA and staff report have been revised to allow 6-months to submit a monitoring plan.
3.8	City of LA	8/25/04	The TMDL defines the duration of a rain event as the start of rain until return to base flow of 20 cfs. There is no need for prescriptive definitions of the wet weather monitoring triggers in the BPA and staff report. The appropriate place for the triggers to be defined is in the monitoring plan. The BPA and staff report should state that the triggers should consider both flow and rainfall and should be defined in the wet-weather monitoring plan.	The proposed BPA and staff report have been revised to exclude the definition of a storm from the TMDL effectiveness monitoring section. However, staff added a definition of dry and wet weather to the Numeric Targets section to clarify the distinction between dry and wet weather.
3.9	City of LA	8/25/04	The State Water Code explicitly forbids the RWQCB from prescribing the method or manner of compliance with any requirement or order of	Prescriptive monitoring requirements have been removed from the staff report and

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			the RWQCB, including a TMDL. Water Code §13360(a). Further, the burden of all monitoring requirements, including cost, must be weighed against the benefits to be obtained and the relationship between the two must be reasonable. Water Code §13267(b)(1) and §13225(c).	BPA. The TMDL does not contain self-executing monitoring program requirements, and an appropriate analysis of benefits and burdens will be undertaken when the regional board orders the preparation of a monitoring and reporting program. The TMDL is not adopted pursuant to Water Code section 13267, but subsequent orders may be. Those orders would require an analysis under Water Code section 13267 for entities discharging waste—such as municipal dischargers. The regional board does not anticipate relying on the authority in Water Code section 13225, subdivision (c)—which allows it to require cities to investigate the quality of waters, even if the cities did not cause or contribute to the waste. The BPA does not specify a compliance monitoring program or report, but instead anticipates a further order from the Regional Board' s Executive Officer. At this time, it is not possible to evaluate the burdens of any such report, because the parameters of the program and reports have not been specified in a Water Code section

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				13267 order. Moreover, the revised BPA shall make clear that the responsible agencies will propose reporting requirements to the Regional Board. As such, the responsible agencies will have a role in determining the actual burden. In developing the 13267 order, the Executive Officer will consider costs in relation to the need for data. With respect to benefits to be gained, the TMDL staff report demonstrates the significant impairment and metals loading. This impairment makes Ballona Creek toxic to aquatic life, contrary to express national policy and goals. Further documenting success or failure in achieving waste load allocations will benefit the responsible agencies and beneficial uses, so that they know when to scale back or reduce compliance efforts.
3.10	City of LA	8/25/04	Source investigations in the event of an exceedance per provisions in the monitoring plan should be required beginning 6 years after the effective date of the TMDL (after the first compliance milestone), rather than immediately.	References to source investigations have been removed from the proposed BPA and staff report.
3.11	City of LA	8/25/04	The cost analysis for stormwater should include data to support the effectiveness of each BMP specific to land uses, data that was used to establish the per unit cost included in the BMP, and assumptions that were used to determine the extent of BMP deployment and runoff capture required to achieve the waste load allocation.	The BMP effectiveness and cost data is referenced in the staff report. The structural BMPs that were selected for the purposes of a cost analysis are specifically designed for an ultra urban environment. Since the TMDL cannot dictate the means of

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				compliance, staff made assumptions about reasonably foreseeable means of compliance. These assumptions were based on estimates of the proposed extent of the IRP and literature about the applicability of structural and non-structural BMPs. The references cited in the Cost Analysis section are listed in the Reference section.
3.12	City of LA	8/25/04	Regarding the Integrated Resources Plan, the reference to a goal of 50% of the annual average wet-weather urban runoff is not entirely correct. The language referencing a goal of using "50% of the annual average wet-weather urban runoff" should be replaced with the more accurate IPWP goal of "increasing the amount of wet weather urban runoff that can be captured and beneficially used in Los Angeles."	The staff report has been revised to incorporate the suggested language.
3.13	City of LA	8/25/04	Although USEPA policy allows waste load allocations for storm water to be expressed in numeric form, it is not required. Insert language in the BPA and staff report stating that compliance with the MS4 and Caltrans waste load allocation may be expressed in the form of BMP implementation through an iterative process, through which the responsible agencies will provide assurances that numeric targets will be met to the MEP.	EPA guidance on establishing WLAs for storm water (11/22/02) states that WLAs must be numerical but that most water quality-based effluent limitations (WQBELs)—the permit requirements that implement the WLAs—for municipal and small construction storm water discharges will be in the form of BMPs, and that numeric limits will be used only in rare instances. Considering that the federal regulations define a TMDL as "[t]he *sum* of the individual WLAs for point sources and LAs for nonpoint sources and natural background," (40 C.F.R. 130.2(i)) it only makes sense that individual components

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				that are "added" together are numeric. The arithmetic sum would be difficult if not impossible to calculate if the WLAs and LAs were not expressed numerically. The BPA and staff report have been revised to reflect the expectation that storm water permit writers will translate waste load allocations into BMPs. Permit writers must provide adequate justification and documentation to demonstrate that specified BMPs are expected to result in attainment of the waste load allocations.
3.14	City of LA	8/25/04	At the six-year point, in addition to reconsidering the WLAs, add reconsideration of the implementation schedule.	The proposed BPA and staff report have been revised to allow for reconsideration of the implementation schedule in the fifth year.
3.15	City of LA	8/25/04	The Regional Board should recognize the importance of source prevention by gaining participation from agencies with authority over air issues. Specify in the implementation plan and proposed BPA how source control for air deposition will be attained, and state the importance of gaining participation from agencies with authority over air issues.	Comment noted. Please note that direct atmospheric deposition has been assigned a load allocation in the revised BPA and staff report.
3.16	City of LA	8/25/04	A reference system/antidegradation approach should be allowed upon completion of reference system studies for metals in our region, if such studies indicate that significant amounts of metals come from background non-anthropogenic sources.	A study by SCCWRP is already under way to quantify natural contributions, including metals, during dry and wet weather. The results of studies on background loadings of metals will be considered prior to TMDL reconsideration at year 5.

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3.17	City of LA	8/25/04	The Regional Board cannot adopt this BPA without a Peer Review and a public review of the Peer Review Report. Access to the Peer Review Report should be provided for public review and an adequate comment period should be allowed prior to conducting a hearing for the adoption of this TMDL.	The proposed TMDL staff report and technical appendices were reviewed by two peer reviewers. Copies of peer review comments have been provided upon request. The staff has made the peer review comments available, even though there is no requirement to allow public comments on the peer review. Peer review and public comment serve two different, but complementary purposes. Peer review is designed to provide an objective, independent, and scientific analysis of the scientific portion of the TMDL.
3.18	City of LA	8/25/04	Add the following "conservative assumption" to the margin of safety list in the staff report and BPA: "The use of conservative assumptions about the toxicity of metals to aquatic life (using the default WER of 1.0)," and "Water quality objectives already have implicit margins of safety in the way these criteria are developed." Delete the third "conservative assumption" regarding wet weather allocations and load capacity.	Without data to support that a WER of 1.0 is conservative for a specific metal, this statement can not be made. The CTR Aquatic life criterion attempts to provide a reasonable and adequate amount of protection with only a small possibility of substantial overprotection or under-protection.
3.19	City of LA	8/25/04	The TMDL did not use a two-dimensional dry weather model, which was previously developed for predicting sediment transport at the mouth of Ballona Creek Estuary, due to the vertical stratification observed in the estuary. The City supports the reconsideration of the TMDL as the three-dimensional model is developed.	Since there is not any water column impairments for metals in the Estuary, the results of a three-dimensional model of the estuary will not be considered.
3.20	City of LA	8/25/04	The front cover and the Introduction of the Staff Report identify the U.S. EPA Region IX and the RWQCB as jointly issuing this document. In a letter to the Los Angeles City Council dated May 6, 2003, U.S. EPA	According to the referenced memo, Federal Register notices would be published for TMDLs established by EPA, not for

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			Region IX agreed to publish draft TMDLs in the Federal Register. The TMDL should be re-noticed for public comment in the Federal Register.	TMDLs being adopted by the Regional Board and submitted to EPA for approval. Nothing in the letter precludes USEPA from participating in the preparation of TMDLs at the Regional Board level.
3.21	City of LA	8/25/04	Other cities within the watershed were not involved in the development of this TMDL and may disagree with portions of the TMDL. The RWQCB should perform outreach to interested cities and address their concerns regarding the TMDL.	Comment noted.
3.22	City of LA	8/25/04	The Ballona Creek Watershed boundary does not accurately reflect the statement that Marina del Rey is a separate TMDL	The map has been updated.
3.23	City of LA	8/25/04	Although the model gives a better indication of the loading during both dry and wet weather coming from Ballona Creek, the results from the analysis should be considered incomplete. The watershed used in running the model (figure 4) excludes the "Lower Ballona Creek" subwatershed (approx. 3,375 acres).	The Lower Ballona Creek subwatershed discharges to Ballona Creek Estuary directly, therefore, it was not included in the calculation of loading conditions to Ballona Creek.
3.24	City of LA	8/25/04	Although it has been proven that infiltration and sand filters have a high removal rate for metals, infiltration requires specific soil conditions and requires land that may or may not exist in order to treat 20% of the watershed. This assumption relies on too many unknowns and should not be relied upon as a solution.	The structural BMPs that were selected for the purposes of the cost analysis are specifically designed for an ultra urban environment. Since the TMDL cannot dictate the means of compliance with the TMDL, staff made assumptions about reasonably foreseeable means of compliance.
3.25	City of LA	8/25/04	The Ballona Creek watershed is 81,920 acres, 20% of this is 16,380 acres. If a device is installed to treat five acres each, as the TMDL assumes, then it would require 3,276 devices, not the 2,816 devices as referred to in the document.	The revised staff report specifies (page 51) that the cost analysis focuses on the urbanized portion of the watershed, which is 70,400 acres, 20% of this is 14,080 acres, which would require 2,816 devices.

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3.26	City of LA	8/25/04	The ambient monitoring will be used to collect additional water quality data for future special studies. These sampling locations should not be restrictive or predetermined and therefore should be proposed by the permittees responsible for the monitoring and submitted as part of the coordinated monitoring plan. Eventually, the coordinated monitoring plan will be approved by the Executive Officer of the Regional Board.	The ambient monitoring program is required to assess water quality throughout Ballona Creek and its tributaries and is not related to any special studies. Details of the monitoring plan will be submitted by responsible jurisdictions pursuant to a subsequent order issued by the Regional Board's Executive Officer.
3.27	City of LA	8/25/04	The compliance monitoring locations should be proposed by the permittees responsible for the monitoring and submitted as part of the coordinated monitoring plan, which must be approved by the Executive Officer of the Regional Board.	The staff report and BPA have been revised to indicate that the ambient monitoring locations may be used for TMDL effectiveness monitoring. In addition, other prescriptive monitoring requirements have been removed from the staff report and BPA. Details of the monitoring plan will be submitted by responsible jurisdictions pursuant to a subsequent order issued by the Regional Board's Executive Officer.
3.28	City of LA	8/25/04	These monitoring locations may not be able to be sampled during wet weather events for safety reasons. During storm events the water rises very quickly and moves at high velocities.	See response to comment number 3.27.
3.29	City of LA	8/25/04	The storm year should be revised to reflect the LACDPW water year, which is October 1st through September 30th.	The proposed BPA and staff report have been revised to remove the definition of a storm year. Details of the monitoring plan will be submitted by responsible jurisdictions pursuant to a subsequent order issued by the Regional Board's Executive Officer.
3.30	City of LA	8/25/04	Both the number and frequency of timed samples should be reduced for	See response to comment number 3.27.

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			ongoing monitoring. Requires automated sampling devices and associated infrastructure.	
3.31	City of LA	8/25/04	Neither Sepulveda nor Centinela channel locations can be sampled from an overpass. In addition, if Sepulveda Channel is the problem, perhaps a sampling point should be placed in the channel rather than Ballona Creek.	See response to comment number 3.27.
3.32	City of LA	8/25/04	Metals data sent to EPA for this analysis were collected between Jan 2002 and May 2003.	The revised staff report has been amended with the correct date.
3.33	City of LA	8/25/04	This should read "selected BMPs" not "required BMPs" unless the RWQCB intends on specifying the BMPs to comply with regulations.	The referenced language means that permits will require BMPs in general, not necessarily specific BMPs.
3.34	City of LA	8/25/04	There is a clear correlation that metals are transported through sediment. As stated in the TMDL Document Section 7.2 subtitled "Potential Implementation Strategies" during wet weather, the metal loading are predominately bound to sediment, which are transported with storm runoff. With these large open spaces contributing to the watershed, they should be included.	There is no allocation for open space because the limited open space in the Ballona Creek watershed drains to the storm drain system before reaching Ballona Creek or its tributaries. Once drainage from open space that is collected by the storm drain system, it becomes a point source and is included with the storm water allocation. The TMDL allows for special studies to further characterize loadings from background or natural sources. The results of these studies will be considered when the TMDL is reconsidered in year five.
3.35	City of LA	8/25/04	This CEQA Checklist does not identify or discuss the environmental impacts of siting and constructing a new storm water treatment plant with reverse osmosis, which may be required to comply with these new regulations.	The CEQA checklist and staff report discuss the potential impacts of construction and operation of urban runoff treatment facilities. The extent to which treatment

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				facilities would be required, including facilities with reverse osmosis, is purely speculative at this point. The Regional Board has located no evidence that reverse osmosis is required to achieve compliance with waste load allocations. Based on the metals removal efficiencies reported by EPA, FHWA, and Caltrans as discussed in section 7 of the staff report, it is reasonably foreseeable that the structural and non-structural BMPs considered would achieve compliance with the waste load allocations.
3.36	City of LA	8/25/04	How would the agencies be able to show compliance? The Regional Board needs to clearly identify or show scenarios for the agencies involved to achieve compliance with the numeric targets.	See response to comment number 3.4.
3.37	City of LA	8/25/04	The ambient monitoring program should be a responsibility shared by all dischargers to the river, which includes not only MS4s and Caltrans but also minor and general NPDES dischargers, industrial permittees, and national forest and state parks.	Regional Board staff will consider ways to expand participation in the ambient monitoring program to minor and general NPDES dischargers and the general storm water permittees when a subsequent monitoring order is issued.
3.38	City of LA	8/25/04	Fifteen years is not enough time to comply with the wet-weather portion of this TMDL. This TMDL requires extensive coordination effort among over than 30 agencies. This is reasonable in comparison with the Santa Monica Beaches Bacterial TMDL implementation schedule, which allow up to 18 years. More time is needed to properly identify the pollutant sources and appropriate control strategies, to determine whether the impairment even exist, and to conduct further water quality studies. In consideration of the above arguments, the City requests 22	The stakeholders for the Ballona Creek watershed include the City of Los Angeles, Beverly Hills, Culver City, Inglewood, Santa Monica, West Hollywood, Los Angeles County and Caltrans. Staff believes that 15 years is sufficient time to meet the wet-weather waste load allocations due to the relatively small size of the

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			years to comply with the wet-weather waste load allocations.	watershed as compared to the Los Angeles River. Also, coordination among MS4 permittees should be easier because the number of cities affected is less than in the Los Angeles River watershed.
3.39	City of LA	8/25/04	There is a need to unequivocally define the term total metals. This document should contain a statement that the terms total metals and total recoverable metals are used interchangeably.	The proposed BPA and staff report have been revised to reference total recoverable metals.
3.40	City of LA	8/25/04	One assumes that the TMDL refers to testing for the 303(d) listed metals. This should be stated explicitly.	The section of the staff report, containing specific TMDL effectiveness monitoring requirements has been removed.
4.1	County of LA Public Works	8/26/04	The County request that the proposed BPA be considered at a future Board hearing.	See response to comment number 1.1.
4.2	County of LA Public Works	8/26/04	The CTR or SIP was never intended to apply to storm water discharges nor was it intended to be applied without consideration of dilution or as never to be exceeded values. It is anticipated that Regional Board staff's response to this comment is that because the CTR standard is intended for specified receiving waters in the Ballona Creek watershed, it must be employed as the numerical objective for the TMDL. However, during wet weather, it is plain that the receiving waters are merely conduits for storm water flows. Were the Regional Board to adopt the CTR criteria as numerical objectives for wet weather flows, it would be doing so in clear violation of the rationale for the CTR criteria, without evidence in the record, and in an arbitrary and capricious manner.	The commentor misstates the CTR and federal law. The CTR establishes federal, numeric water quality criteria for inland surface waters in California, including Ballona Creek. As a result, they are a part of the applicable water quality standards and, hence, the TMDL must be established at levels necessary to implement the CTR. (33 U.S.C. 1313(d)(1)(C). The CTR criteria are set at levels designed to protect aquatic life and implement Congressional policy prohibiting toxic discharges in toxic amounts. The CTR contains no wet weather exception. The CTR-based targets apply to the receiving water, which is a water of the State, and not merely a conduit

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				for storm water flows. In fact, if that were the case, it would be a violation of federal law, which prohibits waters of the U.S. from being used merely for waste transport or assimilation. The beneficial uses of that receiving water must be protected in wet and dry weather. Given that the CTR criteria are expressed as concentration, the concentrations at which metals are toxics does not change because there is more water (i.e., the toxicity concentration does not change in wet weather) because expressing the metals load as a concentration inherently controls for the volume of water. (Only contact recreational uses are suspended during high-flows, and only under very specific circumstances.) The TMDL does not apply CTR-based effluent limits to permit holders but rather CTR-based waste load allocations. Because the Ballona Creek is impaired due to exceedances of CTR objectives, there is no excess assimilative capacity to provide dilution during critical conditions. Therefore, waste load allocations based on applicable CTR criteria are the least

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				stringent waste load allocations that could be applied. The TMDL acknowledges that waste load allocations for storm water will likely be implemented through MS4 NPDES permits as BMPs. The citation to the SIP is irrelevant. The SIP was the State Board's approach for implementing the CTR in certain NPDES permits and programs of the water boards. The SIP did not, and in fact could not, exempt storm water from the water quality standards established in the CTR
4.3	County of LA Public Works	8/26/04	The State has no authority to perform a TMDL for waters not included on the 303(d) List. The proposed BPA includes Centinela Channel, even through it is not listed as impaired. In addition, there are other reaches where there is no alleged impairment for metals, yet the proposed BPA would establish waste load allocations for metal. We note that the San Diego Superior Court recently held that the Regional Board abused its discretion when it included he Los Angeles River Estuary in the TMDL for trash, even though the estuary had not been listed. The TMDL should be scaled back to apply only to impaired reaches and only for the pollutants listed in those reaches.	The proposed TMDL does not regulate all metals in all reaches. Instead, the Regional Board has the authority to assign allocations to upstream reaches in order to meet TMDLs for downstream-impaired reaches. Ballona Creek is listed for copper, lead, selenium, and zinc. The Regional Board can therefore assign waste load allocations to all upstream reaches and tributaries in order to meet the TMDL in Ballona Creek. The BPA and staff report have been revised to clarify for which reaches TMDLs are developed and for which reaches allocations are developed to meet downstream TMDLs.

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				The metals TMDL protects some listed, impaired water body from metals loading by upstream, unlisted water bodies that are contributing to the downstream impairment. The BPA and staff report have also been revised to remove all TMDLs for Centinela Channel and Ballona Creek Estuary, and to remove TMDLs for cadmium and silver in all waterbodies.
4.4	County of LA Public Works	8/26/04	The Staff Report indicates that in three dry-weather sampling events in 2003 in Ballona Creek and Sepulveda Canyon channel, there were no exceedances of the acute or chronic CTR criteria for any of six metals, including those proposed for the TMDL. While earlier sampling by the City of Los Angles only in Ballona Creek reflected exceedances of the CRT criteria for dissolved copper, lead, silver and zinc, the 2003 sampling suggests that it is premature to devise a TMDL for dry-weather flows before further evidence is obtained. Moreover, the absence of any evidence of exceedances in the Sepulveda Canyon channel suggests even more strongly that this reach should not be included in the TMDL. The staff report states that further characterization is need 'to clearly identify if there is impairment" for selenium. The proposed Basin Plan	The 2003 dry-weather sampling event represents a snapshot of Ballona Creek. Although, exceedances were not apparent during these snapshot events, the variability in the data suggests that exceedances are likely to occur, as indicated in the data used to evaluate impairments during the 1998 and 2002 303(d) listing cycle. The TMDL was developed based on available data. The City of Los Angeles January 2002 through May 2003 data demonstrates exceedances of dissolved copper, lead, and zinc. The TMDLs developed for cadmium and silver have been removed from the BPA and staff report, since these pollutants are listed in sediment and not the water column. At this time, there is insufficient data to delist selenium. If additional data, indicates

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			Amendment does call for a re-opener in six years, but only to consider waste load allocation in Ballona Creek Estuary. The Regional Board should direct staff to conduct the sampling required to establish whether selenium concentrations are a cause for impairment and, if not, delete this metal from the proposed TMDL. Alternatively, the Regional Board should provide for an opportunity for a quick reopening of the TMDL, before significant sums have been spent on monitoring for, and planning for control of, selenium, if in fact selenium is not properly included in the TMDL.	that there is no impairment for selenium then the TMDL will be reevaluated in year five. In the interim, if there is no impairment then the permittees should be able to meet the WLAs with no load reductions required. In additional the first interim reduction is not required until year six.
4.5	County of LA Public Works	8/26/04	The Flow Science report notes, aerial deposition from basin-wide sources 'likely constitutes a significant portion of the trace metals found in storm water in the Los Angeles River and Ballona Creek watersheds." Moreover, the failure of staff to include this deposition as a non-point source beyond the control of the MS4 and Caltrans dischargers may violate law.	The proposed BPA and staff report have been revised to include load allocations for direct atmospheric deposition. However, no load allocation is developed for indirect air deposition on the urbanized portion of the watershed. This deposition is accounted for in the waste load allocations for the storm water permittees. Once metals are deposited on land under the jurisdiction of a permittee, they are within a permittee's control and responsibility. Permittees are responsible for the storm water they discharge to the Creek. The TMDL allows for special studies to further characterize loadings from background or natural sources. The results of these studies will be considered when the TMDL is reconsidered in year five.
4.6	County of LA	8/26/04	The staff Report notes that the runoff from the approximately 0.5% of	See response to comment number 3.34.

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	Public Works		the watershed comprising National Park Service and state lands must be accounted for in the TMDL. The staff report and proposed BPA then go on to ignore these contributions on the ground that they are "believed to be minor." The Regional Boards failure to identify load allocations for open space violates the CWA. Moreover, it is arbitrary and capricious for the Regional Board to assume, without any evidence or analysis that metals sources in the non-urbanized areas may be ignored.	
4.7	County of LA Public Works	8/26/04	There is little evidence that construction sites have any reasonable potential to contribute to exceedances of water quality standards. Applying waste load allocations to construction storm water runoff is inconsistent with previous State Board determinations that it is infeasible to impose numeric effluent limits on construction runoff. State Board Order 99-08-DWQ and USEPA stated that the only pollutants present in storm water discharges from construction sites are sediment, TSS and turbidity. Nearly all metals associated with construction are associated with sediment, while biologically toxic effects of metals are associated with the dissolved fraction.	The wet weather model simulated land-use based sources of sediment and associated metals loads and, as discussed in the staff report, metals loadings are often associated with sediment, especially during wet weather. Construction sites are a potential source of sediment loading and metals loading where metals exist in the soil or where metals are washed off construction equipment. Additional references regarding construction sources of metals are included in the source assessment section of the revised staff report. A waste load allocation must be assigned to all construction storm water permittees. Because Ballona Creek is impaired due to exceedances of CTR objectives, there is no excess assimilative capacity to provide dilution during critical conditions. Previously, general storm water permittees were assigned concentration-based waste

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				load allocations. In order to, better allocate loading among sources, the staff report and proposed BPA have been revised to assign mass-based waste load allocations to all storm water permittees, including the general construction and industrial permittees. The allocations are divided among the permittees based on their percent area of the watershed. General construction and industrial storm water permittees have been given a 10-year compliance schedule to achieve wet-weather allocations and interim waste load allocations based on EPA benchmarks. General construction and industrial storm water permittees have been given a dry-weather WLA equal to zero. The TMDLs must establish numeric WLAs for general construction permit activities. While historically many storm water permits have not included strict numeric water quality-based effluent limitations, the TMDLs are designed to serve as a water quality backstop. The definition of a TMDL recognizes that a TMDL is the sum of the individual WLAs and LAs. (40 CFR 130.2(i).) Appropriate numeric WLAs for construction storm water are established to implement section 303(d)(1)(C) of the

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				Clean Water Act.
4.8	County of LA Public Works	8/26/04	The proposed amendment violates the Requirements of Water Code § 13242 because it contains no description of the nature of actions, which are necessary to achieve the objectives of the metals TMDL. Instead, the Staff Report contains a series of loosely described non-structural and structural BMPs. Staff conducted no analysis of the ability of these BMPs to achieve compliance with the objectives.	The proposed TMDL implements existing water quality objectives in conformance with section 13242. The TMDL contains a description of likely structural and nonstructural BMPs that would be used to comply with the existing water quality objectives. Section 13242 only requires a "description of the nature of actions," which is what the TMDL staff report describes. Furthermore, the Regional Board cannot prescribe the method of achieving compliance with the TMDL because of the restrictions in Water Code section 13360, and is unable to describe the nature of all potential actions to achieve compliance. However, the staff report takes into account a reasonably foreseeable means of compliance and the costs associated with compliance.
4.9	County of LA Public Works	8/26/04	The proposed TMDL violates CWC sections 13225(c) and 13267(b)(1) because a cost benefit analysis of the compliance/ambient monitoring programs was not performed.	See response to comment number 3.9.
4.10	County of LA Public Works	8/26/04	At the August 19 workshop, staff indicated that the purpose of monitoring was to establish BMP effectiveness. If initial monitoring indicated that the waste load allocation was being exceeded, additional BMPs would be required, with further monitoring to establish the effectiveness of the additional BMPs. However, the proposed BPA requires permittees to monitor for compliance at four specific	The proposed BPA and staff report have been revised to reflect the purpose and intent of the "compliance monitoring" as described by staff at the August 19 workshop. See response to comment numbers 3.1, 3.2, and 3.9. Furthermore, the

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			monitoring locations. This suggests instead that strict compliance with receiving waters limitations would be required of the permittees, an interpretation which, we believe, is belied by the language of the MS4 permit and which violates the "maximum extent practical" standard required of municipalities under the Clean Water Act.	upstream reaches cause or contribute to impairments in the lower reaches. As a result, effective monitoring will require an understanding of what load is being contributed by upstream reaches. There will be significant benefits to the dischargers because the monitoring will allow dischargers to tailor BMPs to those areas cause or contributing to specific impairments. The proposed TMDL implements existing water quality objectives in conformance with section 13242. The TMDL contains a description of likely structural and nonstructural BMPs that would be used to comply with the existing water quality objectives. Section 13242 only requires a "description of the nature of actions," which is what the TMDL staff report describes. Furthermore, the Regional Board cannot prescribe the method of achieving compliance with the TMDL because of the restrictions in Water Code section 13360, and is unable to describe the nature of all potential actions to achieve compliance. However, the staff report takes into account a reasonably foreseeable means of compliance and the costs associated with compliance. The TMDLs must establish numeric WLAs for

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				general construction permit activities. While historically many storm water permits have not included strict numeric water quality-based effluent limitations, the TMDLs are designed to serve as a water quality backstop. The definition of a TMDL recognizes that a TMDL is the sum of the individual WLAs and LAs. (40 CFR 130.2(i).) Appropriate numeric WLAs for construction storm water are established to implement section 303(d)(1)(C) of the Clean Water Act. Further, the upstream reaches cause or contribute to impairments in the lower reaches. As a result, effective monitoring will require an understanding of what load is being contributed by upstream reaches. There will be significant benefits to the dischargers because the monitoring will allow dischargers to tailor BMPs to those areas cause or contributing to specific impairments.
4.11	County of LA Public Works	8/26/04	The Resolution proposing to adopt the Basin Plan amendment does not indicate that the Regional Board considered, or will consider the factors set forth in section 13241 of the Water code. The Regional Board has an affirmative obligation to consider economics when adopting a TMDL.	The proposed TMDL does not establish or alter water quality objectives. Therefore, the analysis set forth in §13241 is not required here, since section 13241 applies when "*establishing* a water quality objective." Because the TMDL is required under federal law, and is necessary to implement

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				water quality criteria (i.e., water quality objectives) established by USEPA, there can be no serious argument that the TMDL establishes an objective. Furthermore, the Regional Board cannot prescribe the method of achieving compliance with the TMDL and is unable to describe the nature of all potential actions to achieve compliance. However, the staff report takes into account a reasonable range of economic factors in estimating potential costs associated with TMDL compliance. Despite its position that Water Code section 13241 does not apply, the Regional Board has developed information relevant to the section 13241 factors and considered them where appropriate. For example, the regional board has no discretion not to establish the TMDL at a level that will implement the CTR. Consideration of economics in establishing the TMDL could not result in a different total maximum daily load; however, the economics are considered in establishing a lengthy and flexible implementation schedule. This is particularly true of municipal storm water dischargers, where the TMDL

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				implementation anticipates the use of BMPs. (See also the economic discussions set out in See Devinny, Kamieniecki, and Stenstrom "Alternative Approaches to Storm Water Quality Control" (2004), included as App. H to Currier et al. "NPDES Stormwater Cost Survey" (2005). Similarly, the past, present, and probable future beneficial uses have been considered extensively in the staff document. Again, though, the TMDL must implement the existing, federal criteria, federal toxics policy, and protect aquatic life. The environmental characteristics of the Ballona Creek are carefully considered through the TMDL staff document to support the various modeling and implementation strategies. Achieving waters that are free of toxic compounds in toxic amendments is Congressional policy, but by adopting a TMDL that applies to all dischargers to Ballona Creek's impaired reaches, the TMDL establishes a framework for the coordinated control of all factors affecting water quality. It is reasonable to establish this coordinated framework to implement federal policy on toxic water pollutants. With respect to housing, the area draining to Ballona Creek is already substantially built

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				out, but new housing developments are able to incorporate new structural BMPs that would facilitate compliance with the TMDL. The record in the municipal storm water case demonstrates that SUSMP-type measures can be effective and do not preclude the developing housing. Finally, the TMDL may encourage the development and use of recycled water, as the TMDL creates incentives to beneficially reuse water.
4.11.a	County of LA Public Works	8/26/04	The analysis of economic impacts from the proposed BPA is insufficient. The estimated costs fail to include the real costs of acquiring the land needed to implement structural BMPs. A rough estimate of land acquisition costs equal to $884 million can be made based on the median house price in Los Angeles County. Similarly, the staff report contains no estimate of costs for diversion/treatment BMPs.	Since the Regional Board cannot prescribe the method of achieving compliance with the TMDL, the cost analysis is provided as a general estimate of the costs of selected structural and non-structural BMPs. The staff report clearly states the assumptions made for the cost analysis. An analysis of the costs associated with the diversion of resources is not required by CEQA because it is an economic impact, which does not contribute to and is not caused by physical impacts on the environment. An estimation of the costs associated with land acquisition or treatment devices such as reverse osmosis would be speculative. The staff report provides an analysis of size constraints for each type of structural BMP considered. Although land acquisition costs

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				were not calculated based on these size requirements, staff assumes that the permittees would site structural BMPs so as not to displace housing. An estimate of land acquisition cost based on median house price would be unreasonable. Furthermore, staff evaluated structural BMPs that were suitable for an urban setting. For example, Delaware sand filters are subsurface BMPs that are designed to accommodate limited land area. The staff report has been revised to state that the costs of the BMPs analyzed for the MS4 WLAs could generally be applied to other permittees such as the general construction and industrial storm water permittees.
4.11.b	County of LA Public Works	8/26/04	The City of Los Angeles recently issued a Notice of Preparation of an EIR for their Integrated Resources Program (IRP). If this program, which is considered a chief implementation strategy in the staff report, requires an EIR, how could staff determine that there are feasible alternatives or feasible mitigation measures that would substantially lessen any significant adverse impacts of the entire TMDL.	The staff report supports the IRP but does not require it as an implementation strategy. The cost analysis assumes that compliance in 30% of the watershed would be achieved through IRP in order to provide a reasonable estimate of potential costs associated with compliance.
4.12	County of LA Public Works	8/26/04	The CEQA checklist notes that a separate CEQA review process will likely be required. However, the Regional Board must analyze the entire project and cannot avoid its CEQA responsibilities by deferring them to other agencies who will be legally bound to implement split off	The method by which a discharger decides to achieve compliance is a project-level decision that will require an independent environmental review (Pub. Res. C. §

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			segments of that project. In addition, the Checklist wrongly assumes that there are feasible mitigation measures for every potential adverse impact. Future actions that will be required in order to carry out the TMDL may result in significant unavoidable impacts.	21159.2), which is beyond the scope of analysis that the Regional Board is required to take (Pub. Res. C. § 21159(d)). However, staff has indicated reasonably foreseeable environmental impacts of the TMDL as an overall program, and reasonably foreseeable environmental impacts of feasible methods of implementing the TMDL. The environmental checklist draws on analysis contained in and conclusions reached in the staff report. Because the Regional Board does not prescribe the method of achieving compliance with the TMDL, staff cannot identify all project-level impacts (and associated mitigation measures) that might occur from the myriad of structural and non-structural implementation strategies that could be used to achieve the TMDL. However, staff considered substantial evidence when conducting CEQA review and could find no fair argument that there could be project-level significant environmental impacts. As noted, there are myriad ways individual discharges could choose to select, combine, and optimize BMPs. Any more detailed analysis at this time would be purely speculative, and CEQA does not require speculative

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				assumptions to be made.
4.13	County of LA Public Works	8/26/04	The CEQA checklist fails to adequately note and evaluate the environmental impacts from the proposed BPA. Comments submitted by Dr. Gerald Greene and Eduard Schroder and a table that is found in those comments, detailing each environmental impact that, in the view of these individuals, would constitute a definite or possible significant environmental impact. These comments are hereby incorporated as though set forth herein.	See response to comment numbers 4.a.1 through 4.a.35.
4.14	County of LA Public Works	8/26/04	The Checklist Does not Meet the Statutory Requirements for a Substitute Environmental Document. The determination that while the proposed BPA "could have a significant adverse effect on the environment," there are "feasible alternative and/or feasible mitigation measures that would substantially lessen any significant adverse impact" is not supported in the Checklist or the staff report. Neither the checklist nor the staff report sets forth any specific mitigation measures, only vague assurances that have no empirical basis.	See response to comment numbers 4.12 and 4.14.a.
4.14.a	County of LA Public Works	8/26/04	The Checklist and staff report do not discuss alternatives to the "project" represented by the TMDL, in direct violation of CEQA and the Regional Board' s own regulations in Title 23 of the Code of Regulations.	The BPA, together with the staff report and backup materials, are a substitute document for an EIR or negative declaration and initial study. Included in these backup materials is the agenda item summary prepared prior to the Board's consideration of the proposed BPA. The item summary will discuss alternatives to the proposed action, including a "no action" alternative. It is important to recall that there is no discretion in establishing WLAs derived from the CTR. The discretion, for which appropriate alternatives are considered, is

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				contained within the program of implementation.
4.15	County of LA Public Works	8/26/04	The TMDL, when implemented, will require significant outlays of funds by local governments to design, install, construct and maintain both non-structural and structural BMPs. No funding mechanism, however, has been provided for the TMDL by the State. The TMDL also goes far beyond the specific requirements of the Clean Water Act or USEPA' s regulations, and represents in fact a new state program. Note that the CTR criteria, which form the basis for the TMDL numerical objectives, were adopted specifically as not creating a federal mandate on any state, local or tribal government, or on the private sector. See 65 Fed. Reg. 31682, 31708.	The entire TMDL is compelled by federal law, and as such, is not an unfunded state mandate. First, the reductions in loading will be required as part of the NPDES permits. The State Board has previously found that the requirement to reimburse local agencies for state-mandated costs does not apply to NPDES permits. SWRCB Order No. WQ 90-3 (In the Matter of San Diego Unified Port District). Second, the requirement that states develop TMDLs for impaired waters is clearly set forth at 33 U.S.C. 1313(d)-(e). The proposal includes several years for the affected agencies to conduct planning and implementation activities, and to explore and select any necessary funding options, including loans, grants and revenue increases. Moreover, the TMDL implements the applicable water quality standard, and makes all dischargers (regardless of whether they are private individuals, corporations, or public agencies) responsible for meeting the water quality standard. As a result, the TMDL is generally applicable and not subject to subvention requirements in

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				Article XIII. Finally, whether a USEPA regulatory action is a "federal mandate" is irrelevant to analyzing this TMDL under Article XIII of the California Constitution. USEPA found that the CTR did not meet the specific definitions set forth in the federal "Unfunded Mandates Reform Act of 1995." Those standards are irrelevant to California law.
4.16	County of LA Public Works	8/26/04	The implementation schedule should be changed to allow 300 days, or 10 months, rather than 120 days to prepare a coordinated monitoring plan for compliance and ambient monitoring.	See response to comment number 3.7.
4.17	County of LA Public Works	8/26/04	The 12 months allowed for a draft implementation plan is not enough time and should be increased to 30 months.	See response to comment number 3.6.
4.18	County of LA Public Works	8/26/04	The final implementation plan should be required 36 months, not 16 months, after the TMDL effective date.	See response to comment number 3.6.
4.19	County of LA Public Works	8/26/04	The first compliance deadline should be, at a minimum, 8 years after the effective date, with the second deadline at 11 years, the third deadline at 15 years, and the final deadline at 20 years.	See response to comment number 3.38.
4.20	County of LA Public Works	8/26/04	From the attached Flow Science report: The SIP does not apply to regulation of stormwater discharges and was not intended to be applied without consideration of dilution or as never-to-be exceeded values. Further, in adopting the CTR, EPA intended to allow periodic exceedances of CTR criteria. The Ballona Creek TMDL applies CTR concentration-based limits to all NPDES permit holders and mass-based allocations to storm flows.	See response to comment number 4.2.
4.21	County of LA	8/26/04	From the attached Flow Science report: The Board would be	See response to comment number 4.3.

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	Public Works		overstepping its authority (see Statement of Decision and Judgement in the Cities of Arcadia et al v. State Water Resources Control Board) by specifying waste load allocations for reaches that are not on the 303(d) list.	
4.22	County of LA Public Works	8/26/04	From the attached Flow Science report: The proposed TMDL for the Ballona Creek watershed develops waste load allocations for cadmium, selenium and silver even though available data are inadequate to support such a listing.	See response to comment number 4.4.
4.23	County of LA Public Works	8/26/04	From the attached Flow Science report: It is inappropriate to require storm water discharges to assume responsibility for metals in storm water that originate from aerial deposition. The commentor cited *Communities for a Better Env't v. State Water Resources Control Board* as support for this conclusion.	See response to comment number 4.5.
4.24	County of LA Public Works	8/26/04	From the attached Flow Science report: No data are used to support the assumption that loads from non-urban areas are insignificant and data from other sources suggest that this assumption may be invalid. Aerial deposition is a significant source of trace metals in storm water runoff. Native soils in the natural areas contain significant quantities of copper, lead, and zinc, assuming typical concentrations in soil and typical storm conditions.	See response to comment number 3.34.
4.25	County of LA Public Works	8/26/04	From the attached Flow Science report: The application of waste load allocations to construction storm water is inconsistent with determinations by the SWRCB that it is infeasible to impose numeric effluent limits on construction runoff. There is little evidence that construction sites have reasonable potential to contribute to exceedances of water quality standards, and applying the WLAs to construction storm water runoff is contrary to the Clean Water Act and administrative and judicial precedent.	See response to comment number 4.7.
4.26	County of LA	8/26/04	From the attached Flow Science report: The low-cost, non-diversion and	The staff report included total and dissolved

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	Public Works		treatment BMPs anticipated by staff may not be capable of achieving the requirements of the TMDL, either alone or in conjunction with nonstructural BMPs. Typical BMPs such as detention basins are not able to remove a significant proportion of dissolved metals. The BMPs that are most effective at removing dissolved metals are retention basins, treatment wetlands, and biofilters, which are impractical for use in Southern California. Dissolved metals removal is particularly important since dissolved metal is the fraction that contributes to toxicity in receiving waters. Infiltration trenches and sand filters, which are more suited to Southern California, are only capable of 11% removal of dissolved copper, 21% removal of dissolved zinc, and 50% removal of dissolved lead.	metals removal efficiencies as reported by U.S. EPA, FHWA, and Caltrans. The removal efficiencies of each type of BMP vary from study to study depending on site specific conditions. That is why a successful approach to compliance will involve a matrix of structural and non-structural BMPs that take into account site specific factors. It is important to note that while the CTR standards are expressed in terms of dissolved metals, the waste load allocations are expressed in terms of total metals. It is noted that during wet weather, metals are discharged primarily in particulate form. Therefore, total metals, not just dissolved metals, removal is important for TMDL compliance.
4.27	County of LA Public Works	8/26/04	From the attached Flow Science report: The proposed BPA's requirement for additional compliance monitoring is unspecified, as is the mode of determining whether a flow (or a particular discharger) is out of compliance. Leaving the determination of compliance up to the dischargers and failing to specify monitoring requirements potentially would create the need for very extensive monitoring, such as multiple water quality and flow measurements over many hours.	The Regional Board cannot prescribe monitoring requirements or the method of achieving compliance with the TMDL. The staff report and BPA have been revised to require the MS4 and Caltrans permittees to demonstrate TMDL effectiveness in prescribed percentages of the watershed, without specifying the method of compliance or monitoring.
4.28	County of LA Public Works	8/26/04	From the attached Flow Science report: The dry weather modeling conducted in support of the Los Angeles River metals TMDL contains a flow calibration that appears to be inadequate. The model is not able to	Comment is specific to the Los Angeles River Metals TMDL and is not applicable to the Ballona Creek Metals TMDL.

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			reproduce dry weather flow rates in a precise way and tends to predict high and not average or median dry weather flows.	
4.29	County of LA Public Works	8/26/04	From the attached Flow Science report: The wet weather modeling conducted in support of the Los Angeles River metals TMDL does not adequately reproduce empirical data describing watershed hydrology and water quality. The statement that "during model calibration the model predicted storm volumes and storm peaks well" is misleading. In multiple cases, the model did a poor job of reproducing monthly flow rates and annual flow volumes and in most cases the model did a poor job of reproducing the observed average daily flow rate record.	Comment is specific to the Los Angeles River Metals TMDL and is not applicable to the Ballona Creek Metals TMDL.
4.30	County of LA Public Works	8/26/04	From the attached Flow Science report: The dry and wet weather modeling in support of the Los Angeles River metals TMDL is essentially irrelevant to the discharge requirements for small discharges in the watershed. If properly implemented and utilized by the Regional Board, both the dry and the wet weather modeling could be used as tools to properly establish waste load and load allocations throughout the Los Angeles watershed, to identify the true sources of water quality impairment, and to establish allocations that are based on firm science and that are consistent with available data and known impairments.	Comment is specific to the Los Angeles River Metals TMDL and is not applicable to the Ballona Creek Metals TMDL.
4.a.1	Downey and TECS	8/25/04	The CEQA checklist is irreparably shallow and flawed, due to the apparent disregard for the many concerns shared with Regional Board staff by the commentors.	See response to comment number 4.12.
4.a.2	Downey and TECS	8/25/04	While the checklist makes a finding of "no" significant impact on housing, the City of Los Angeles IRP EIR Notice of Preparation (NOP), which the subject amendment is dependent upon, identifies housing loss as a potential project impact. The Santa Monica Urban Runoff Reclamation Facility occupies 19,000 square feet or about 3 typical residential lots. Based on typical media filter design parameters, a projected 1 in 500 single-family residential lots would be sacrificed for	While it is reasonably foreseeable that the installation of infiltration trenches, sand filters, or other structural BMPs will be necessary to achieve compliance with the TMDL, it is not reasonably foreseeable that the installation of these BMPs would lead to sacrificed housing. This is because

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			runoff filtration.	structural BMPs can be suitable for an ultra-urban setting and can be specifically designed to accommodate limited land area, such as the subsurface Delaware sand filters. Furthermore, based on the estimated size constraints discussed in the staff report, the area required to site structural BMPs is significantly less than the total urbanized portion of the watershed. It is not reasonably foreseeable that there would be a need to displace housing for this limited area. The extent to which housing would be affected by implementation of the TMDL would be purely speculative.
4.a.3	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Earth" as large storm runoff detention basins may be built below grade, treatment plants may be constructed and the subsoil compacted, and structural BMPs may be constructed below grade or require soil removal and disposal. The City of LA NOP noted similar issues for the IRP.	Staff responded with a "maybe" answer to this question in the CEQA checklist because to the extent that project-level impacts may exist, staff recommended certain mitigation measures, in accordance with 14 CCR 15091, such as the proper design and siting of structural BMPs, that could be adopted by to avoid negative impacts. Furthermore, the benefits to aquatic life and wildlife habitat outweigh any potential negative impacts.
4.a.4	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Earth" because even with BMPs, most construction projects are susceptible to the loss of silts, clays and other fine materials, as well as organic and biologic soil constituents. This project will result in many construction projects such	Staff responded with a "no" answer to this question in the CEQA checklist because there is no substantial evidence that there would be significant or reasonably

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			as filters and treatment plants. The City of LA NOP noted similar issues for the IRP.	foreseeable impacts on erosion associated with the implementation of the TMDL by permittees. To the extent that construction of structural BMPs would be needed to comply with the TMDL, construction sites are required to retain sediments on site, either by a general construction storm water permit or through the construction program of the applicable MS4 permit, both of which are already designed to minimize or eliminate erosion impacts on receiving water.
4.a.5	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Earth" because the greatest metal mass loading in runoff is from particulates, not dissolved metals. Ignoring source control, the most effective metal control strategy is to remove the particles of sediment that would otherwise settle in the bay or harbor. This will exacerbate the already sediment starved condition of the Ballona Creek system, although the harbor would be dredged less frequently.	Staff responded with a "no" answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on sedimentation. The commentors' assertion that Ballona Creek is sediment starved is erroneous and in fact, the removal of sediments and sediment-bound metals will have a positive impact on the Creek and will address impaired sediments in the estuary.
4.a.6	Downey and TECS	8/25/04	Checklist review: There may be an impact on "Earth" because although much of the watershed soil is poor for infiltration, to the extent that basins and trenches are successful, adjacent areas may become more susceptible to liquifaction. During construction sand filters and new drain lines are susceptible to ground failures, which must be mitigated	Staff responded with a "no" answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on ground

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			with engineering and construction measures. The City of LA NOP noted similar issues for the IRP.	stability. The commentors' assertion that the use of infiltration trenches will cause increased risk of liquefaction is an unsubstantiated opinion and a speculative possibility. In fact, infiltration trenches, when properly sited, can have a positive impact by addressing the effects of development and increased impervious surfaces in the watershed.
4.a.7	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Air" because during construction, air emissions and fugitive dust can be expected to reduce air quality. State Boards have precipitated other errors in environmental judgement (e.g. MTBE and Carver Greenfield). The City of LA NOP noted similar issues for the IRP.	Staff responded with a "maybe" answer to this question in the CEQA checklist because to the extent that project-level impacts may exist, staff recommended certain mitigation measures to avoid negative impacts, in accordance with 14 CCR 15091, such as consulting with and obtaining appropriate permits from the applicable air pollution control agency. Furthermore, the benefits to aquatic life and wildlife habitat outweigh any potential negative impacts.
4.a.8	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Air" because public resources (state and local) are insufficient to deal with current pollution and homeless issues. The project would further consume those resources while constructing in more problematic facilities. The City of LA NOP noted similar issues for the IRP.	Staff responded with a "no" answer to this question in the CEQA checklist because the diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment.
4.a.9	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Water" because infiltration basins and trenches, potable and wastewater treatment facilities will move water from surface receiving waters into ground or	Staff responded with a "maybe" answer to this question in the CEQA checklist because to the extent that project-level impacts may

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			different receiving water locations. As reclaimed water replaces ocean cooling water, this may result in less available surface waters.	exist, they are positive effects. The use of infiltration devices reverses the negative effects of development by increasing pervious surfaces in the watershed.
4.a.10	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Water" because infiltration basins and trenches will directly add surface runoff into regional groundwater basins. If groundwater levels rise, there may then be a subsequent, and potentially beneficial, increase in ground water withdrawals.	Staff responded with a "maybe" answer to this question in the CEQA checklist because to the extent that project-level impacts may exist, staff recommended certain mitigation measures to avoid negative impacts, in accordance with 14 CCR 15091, such as proper design and siting of infiltration devices and groundwater monitoring. Furthermore, the benefits to aquatic life and wildlife habitat outweigh any potential negative impacts.
4.a.11	Downey and TECS	8/25/04	Checklist review: There may be an impact on "Animal Life" because reaches upstream of POTWs may no longer receive dry-weather runoff, depriving wildlife of this water source. (Water may still be found in street gutters and yards, but with greater risk exposure.) The City of LA NOP noted similar issues for the IRP.	Staff responded with a "maybe" answer to this question in the CEQA checklist because to the extent that project-level impacts may exist, staff recommended certain mitigation measures to avoid negative impacts, in accordance with 14 CCR 15091. While there are no POTW discharges to Ballona Creek, staff notes that several permits within the watershed have been issued for dewatering and process related discharges that are expected to meet CTR limits and provide wildlife with sustained high water quality flows within the Creek. Staff also notes that the restored Ballona Creek

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				wetlands is another nearby water source for the local wildlife.
4.a.12	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Noise" because the project will result in numerous residential area construction projects. Pumps may be required, needing soundproofed facilities. The City of LA NOP noted similar issues for the IRP.	Staff responded with a "maybe" answer to this question in the CEQA checklist because to the extent that any limited, short-term project-level impacts may exist, staff recommended certain mitigation measures to avoid negative impacts, in accordance with 14 CCR 15091, such as limiting or restricting hours of construction. The commentors assertion that pumps would be required needing soundproofing facilities is an unsubstantiated opinion and a speculative possibility. To the extent that pumps would be used to supplement structural BMPs (although they are not required) negative noise impacts could be avoided by properly siting facilities. Furthermore, the benefits to aquatic life and wildlife habitat of removing toxic pollutants from the river outweigh any potential negative impacts.
4.a.13	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Noise" because the project will result in numerous residential area construction projects, often needing heavy earthmoving equipment. The City of LA NOP noted similar issues for the IRP.	See response to comment numbers 4.a.12 and 4.a.16.
4.a.14	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Light and Glare" because to the extent that the project facilities, including ancillary structures, may be attractive nuisances, lights maybe used to increase	Staff responded with a "no" answer to this question in the CEQA checklist because there is no substantial evidence that there

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			safety. The City of LA NOP noted similar issues for the IRP.	would be a significant or reasonably foreseeable negative impact on light and glare. The assertion that lights used to increase safety at project facilities would produce new light or glare is an unsubstantiated opinion and a speculative possibility. To the extent that light would be needed to increase safety at a project facility, the facility could be sited in an area where any potential increased lighting could not pose a significant impact.
4.a.15	Downey and TECS	8/25/04	Checklist review: There maybe an impact on "Risk of Upset" because treatment plants often use a variety of disinfectants and caustics to maintain efficient process operation. Despite great care, there is a small risk that these contaminants might escape. The City of LA NOP noted similar issues for the IRP.	Staff responded with a "no" answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable risk of upset. The assertion that there could be a potential escape of disinfectants and caustics used to maintain efficient operation of treatment facilities is an unsubstantiated opinion and a speculative possibility. The staff report considers a potential means of compliance that uses a mix of non-structural BMPs and infiltration devices, which would not require disinfectants and caustics. This approach is supported by a separate study. (See Devinny, Kamieniecki, and Stenstrom "Alternative Approaches to Storm Water Quality Control" (2004), included as App.

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				H to Currier et al. "NPDES Stormwater Cost Survey" (2005).) Furthermore, the "small risk" of escape of contaminants could be mitigated by proper maintenance and oversight.
4.a.16	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Transportation" because despite the vague staff report, it is clear the project calls for hundreds of new construction projects. This will generate substantially more traffic primarily in residential areas. The City of LA NOP noted similar issues for the IRP.	Staff responded with a "no" answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on transportation. The assertion that there could be a significant increase in traffic due to hundreds of construction projects is an unsubstantiated opinion and a speculative possibility. The extended nature of the proposed implementation schedule allows for construction projects to be spread out both spatially and temporally. To the extent that any limited, short-term, project-level impacts may exist, they could be mitigated by limiting or restricting hours of construction.
4.a.17	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Transportation" because the most common location for drainage facilities is the public right of way. In addition to foreseeable traffic detours, bicyclists and pedestrians often use access roads along channels. Even with appropriate signage/barricades, the public risk factor is significant. The City of LA NOP noted similar issues for the IRP.	Staff responded with a "no" answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on transportation. The assertion that there could be a significant risk to bicyclists and

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				pedestrians by locating drainage facilities along the public right of way is an unsubstantiated opinion and a speculative possibility. To the extent that any limited, short-term, project-level impacts may exist, they could be mitigated by limiting or restricting hours of construction.
4.a.18	Downey and TECS	8/25/04	Checklist review: There maybe an impact on "Public Service" because without a significant increase in public support, a diversion of over 1 billion local dollars is likely to reduce the supply of most public services. It is notable that Los Angeles City has prepared a $500 million bond measure for other TMDL related projects. Detours may impact traffic and further increase response times. The City of LA NOP noted similar issues for the IRP.	Staff responded with a "no" answer to this question in the CEQA checklist because the diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment. See response to comment number 4.a.16 regarding potential traffic detours.
4.a.19	Downey and TECS	8/25/04	Checklist review: There maybe an impact on "Public Service" because without a significant increase in public support, a diversion of over 1 billion local dollars is likely to reduce the supply of most public services. This project has the potential to greatly increase the number of public facilities, which law enforcement must protect from various forms of vandalism and vagrancy. The City of LA NOP noted similar issues for the IRP.	Staff responded with a "no" answer to this question in the CEQA checklist because the diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment. The assertion that there would be a significant effect on law enforcement because they would have to protect treatment facilities is and unsubstantiated opinion and a speculative possibility.
4.a.20	Downey and TECS	8/25/04	Checklist review: There maybe an impact on "Public Service" because without significant support, a diversion of over 1 billion dollars is likely to reduce the supply of public services. Los Angeles City has installed	Staff responded with a "no" answer to this question in the CEQA checklist because the diversion of resources is an economic

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			an infiltration structure at a Pacoima school. This impact may be short term, but cannot be determined from the project report. The City of LA NOP noted similar issues for the IRP.	impact, which does not contribute to and is not caused by physical impacts on the environment. The assertion that there could be an impact to schools by siting BMPs on school campuses is an unsubstantiated opinion and a speculative possibility. It is not required that these BMPs be installed on school campuses. To the extent that they are, they can serve multiple land use purposes. Many structural BMPs are designed to provide recreational areas.
4.a.21	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Public Service" because while the checklist identifies additional maintenance, the project mandates the construction of new government services. This project imposes construction of detention basins, infiltration trenches, sand filters, pump stations, and dedicated runoff treatment facilities. The City of LA NOP noted similar issues for the IRP.	Staff addressed this potential impact by checking "yes" in the CEQA checklist. The environmental checklist draws on analysis contained in and conclusions reached in the staff report. Because the Regional Board does not prescribe the method of achieving compliance with the TMDL, staff cannot identify all project-level impacts (and associated mitigation measures) that might occur at the project level.
4.a.22	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Public Service" because the checklist identifies monitoring, public outreach, additional sweeping and structural BMP maintenance. To this we would add specialized treatment plant and pump station operators, laboratory staff, construction inspectors, hydrologic modelers and inspectors. The City of LA NOP noted similar issues for the IRP.	See response to comment number 4.a.21.
4.a.23	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Energy" because the project creates a significant demand for heavy equipment fuel and long	Staff responded with a "no" answer to this question in the CEQA checklist because

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			term demand for electricity to operate pumps, dedicated runoff treatment plants, and expanded POTWs.	there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on energy. The assertion that there could be a significant impact to energy due to the demand for heavy equipment fuel and electricity for pumps, treatment plants, and expanded POTWs is an unsubstantiated opinion and a speculative possibility. The staff report considers a potential means of compliance that uses a mix of non-structural BMPs and infiltration devices, which would not require such demands. Also see response to comment number 4.a.15.
4.a.24	Downey and TECS	8/25/04	Checklist review: There maybe an impact on "Energy" because some facilities could be constructed with solar cells/roofing, but this would need to be balanced against increased maintenance, construction, and protection costs. Alternatives such as recreation and wildlife habitat might also have to be abandoned or modified in some in frequent cases.	See response to comment number 4.a.23.
4.a.25	Downey and TECS	8/25/04	Checklist review: There maybe an impact on "Utilities and service systems" because telemetry systems may need to be developed to monitor flows, sand filters and treatment plant operation. Increased security monitoring maybe required to protect these facilities and the public from vandalism and vagrancy.	See response to comment number 4.a.19.
4.a.26	Downey and TECS	8/25/04	Checklist review: There may be an impact on "Utilities and service systems". It is unclear from the staff report whether the detention basin and treatment plants might be used to produce supplemental potable water. The incremental cost of producing treated runoff and potable water is diminished by this proposal and may cause new reclamation	Staff responded with a "no" answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on utilities and

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			opportunities to develop.	service systems - water. The impact due to new reclamation opportunities would be a positive impact.
4.a.27	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Utilities and service systems". It is unclear whether the Board staff considered a runoff treatment plant or diversion to be an altered part of the sewer system or a new public service, but it should be included somewhere in the checklist. Los Angeles City plans to expand the Hyperion POTW an impact. The City of LA NOP noted similar issues for the IRP.	Staff responded with a "no" answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on utilities and service systems – sewer or septic tanks. Diversion of runoff to a treatment plant is one potential means of compliance. The need for a treatment plant to alter or expand its design capacity is an unsubstantiated opinion and a speculative possibility. In fact, staff has received comments that certain POTWs would not accept additional inflow from dry-weather diversions that would cause them to expand their facilities.
4.a.28	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Utilities and service systems". A one sentence mitigation statement doesn't convey the magnitude of impacts associated with a Public Works program projected by LARWQCB at > $1 billion. The City of LA NOP noted similar issues for the IRP.	Staff has indicated reasonably foreseeable environmental impacts of the TMDL as an overall program, and reasonably foreseeable environmental impacts to storm water drainage (and associated mitigation measures) at the project level. Also see response to comment 4.a.21.
4.a.29	Downey and TECS	8/25/04	Checklist review: There maybe an impact on "Utilities and service systems" because the project proposes removal of multiple pollutants at the proposed facilities. Solid waste might be collected at some or all and would need to be collected and properly disposed of on a regular	Staff responded with a "no" answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably

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			schedule. The sand filter schmutzdecke needs to be regularly disposed of. The City of LA NOP noted similar issues for the IRP.	foreseeable negative impact on new or altered solid waste disposal. The references cited in the staff report discuss the operation and maintenance requirements of infiltration trenches and sand filters. For example, sand filters in Austin are tested prior to disposal and it has been shown that the media is not toxic and can be safely landfilled. Removal of sand media is typically required every 3 to 5 years.
4.a.30	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Human health" because vector production is a foreseeable impact attributable to this project. Public resources are too scarce to support the required level of filter, trench, and wet well inspection and maintenance activities.	Staff responded with a "maybe" answer to this question in the CEQA checklist because to the extent that project-level impacts may exist, staff recommended certain mitigation measures to avoid negative impacts, in accordance with 14 CCR 15091, such as minimizing stagnant water and consulting with vector control agencies.
4.a.31	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Human health" because many of the facilities and habitat areas contemplated by this project, will be located in residential areas where the exposure risk from zoonotic and vector borne diseases will be greatest.	See response to comment number 4.a.30.
4.a.32	Downey and TECS	8/25/04	Checklist review: There would be an impact on "Aesthetics" because the proposed project contemplates constructing over $1 billion of treatment and ancillary facilities in the Los Angeles River watershed. Many sites will be in residential areas, becoming attractive nuisances with graffiti, trash, homelessness and potential criminal activity occurring within the public view.	Staff responded with a "no" answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on aesthetics. The assertion that the installation of structural BMPs will cause graffiti, trash,

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				homelessness, and potential criminal activity in residential areas is an unsubstantiated opinion and a speculative possibility. In fact, many structural BMPs are designed to provide habitat, recreational areas, and green spaces, which would increase the quality of life for residents. As discussed in the staff report, these BMPs are effective at *removing* trash, not creating trash. The commentor offers no evidence to support the claim that green spaces and recreational areas attracts criminal activity.
4.a.33	Downey and TECS	8/25/04	Checklist review: There maybe an impact on "Recreation" because to the extent that lot size exceeds treatment demands, open space may be created; but this implies that more lots will be sacrificed to reach the required treatment area. Parks and schoolyards maybe preferentially sacrificed to preserve the existing housing stock. The City of LA NOP noted similar issues for the IRP.	Staff responded with a "no" answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on recreation. While it is reasonably foreseeable that the installation of infiltration trenches, sand filters, or other structural BMPs will be necessary to achieve compliance with the TMDL, it is not reasonably foreseeable that the installation of these BMPs would lead to sacrificed parks and schoolyards. This is because structural BMPs can be suitable for an ultra-urban setting and can be specifically designed to accommodate limited land area, such as the subsurface Delaware sand filters. They can serve

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				multiple land use purposes. See also response to comment numbers 4.a.2 and 4.a.32.
4.a.34	Downey and TECS	8/25/04	The checklist states that projects maybe designed to address the need for more parks and wildlife habitat and to improve water quality." While parks and wildlife habitat may constitute an impact mitigation measure to Regional Board Staff, residents will reject their insertion, into what had been quiet uniform neighborhoods, just as vigorously as storage basins, sand filters, diversion stations, and even industrial style treatment plants.	See response to comment number 4.a.32.
4.a.35	Downey and TECS	8/25/04	The CEQA analysis must seriously consider alternative strategies, and their respective mitigation measures, before implementing significant intrusive facilities in existing residential areas. The undersigned strongly believe that LARWQCB Staff should have made a Mandatory Finding of Significant, Substantially Adverse, and Cumulative Impacts, leading to the preparation of a project EIR commensurate with the construction of a billion-dollar regional drainage project. The capture and treatment of runoff water should not be so benignly trivialized and to certify the subject reports as being Functionally Equivalent in addressing "all activities and impacts associated with a project", does irreparable harm to the watershed Permittees. This is especially true considering that one municipality has apparently committed to a costly EIR on a portion of the Board project that occurs within its jurisdiction.	See response to comment numbers 4.11.b and 4.12.
5.1	Caltrans	8/26/04	We are supportive of efforts to improve water quality in Ballona Creek, but concerned with the sequential nature of the TMDLs being developed. The current process of developing TMDLs sequentially for trash, metals, bacteria and other constituents of concern is a concern. Just as the design is completed to reduce the concentration of one constituent, it must be reanalyzed (and possibly redesigned) to address	The Regional Board has no choice but to take a sequential approach to developing the TMDLs due to the prescribed schedule set for certain TMDLs in the consent decree.

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			the requirements of the next TMDL. Caltrans strongly encourages the Board to follow a holistic approach to water quality impairments, so that the ultimate performance requirements of any BMPs that must be installed can be considered at the beginning of the design process.	
5.2	Caltrans	8/26/04	Ballona Creek is a highly altered system, which primarily exists as concrete channels and underground storm drains. Without prohibitively expensive stream restoration efforts, Ballona Creek cannot fully support many of the designated uses assigned to it. Consequently, the development of a TMDL to support aquatic life or primary contact recreation may not be appropriate.	This TMDL is being developed to meet water quality objectives set to protect the past, present, and probable beneficial uses (CWC § 13241) of Ballona Creek as identified in the Basin Plan, and to specifically implement the numeric water quality standards established in the CTR. These beneficial uses must be protected year-round. (Basin Plan page 2-1) Moreover, the toxicity standards (which are a reflection of national policy prohibiting the discharge of toxic pollutants in toxic amounts) are designed to protect presumptive uses under section 101 of the Clean Water Act. The CTR criteria are set to protect both existing and potential beneficial uses of the water body. Although Ballona Creek has been highly modified, it nonetheless supports a viable aquatic environment even in low-flow conditions. The protections for warm freshwater habitat are not limited to high-level organisms such as fish. The WARM designation includes "aquatic habitats,

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				vegetation, fish, or wildlife, including invertebrates." These are viable in low-flow waterways and are entitled to the protection afforded in national policy that discharges of toxic pollutants in toxic amounts shall be prohibited.
5.3	Caltrans	8/26/04	The monitoring data from the City of Los Angeles and SCCWRP included in the report indicate that exceedances of water quality objectives are relatively rare. For instance, observed values in Table 2-9 (Staff Report page 13) show that objectives for several constituents are exceeded during wet weather in less that five percent of storm events. Consequently, it seems difficult to justify spending hundreds of millions of dollars to address what is today a relatively infrequent occurrence.	See response to comment number 4.4.
5.4	Caltrans	8/26/04	The monitoring data also indicate a high degree of variability in the quality of dry weather discharges from various storm water outfalls. This suggests that the occasional exceedances may be caused by a relatively few dischargers. Implementation of a source tracking program to identify dry weather discharges with elevated concentrations of the constituents of concern may be a much more cost effective program than imposition of watershed wide requirements.	A source-tracking program was one of the non-structural BMPs that was suggested in the Implementation Section of the TMDL.
5.5	Caltrans	8/26/04	The TMDL draft staff report and the Basin Plan amendment acknowledge assigning load and waste load allocations based on watersheds. Approximately 1,080 acres of the Department's right-of-way within Region 4 drains to Ballona Creek. This area represents approximately 1.3% of the total watershed (128 square miles) that flows to Ballona Creek. Given the small fraction of the runoff the Department contributes to the watershed, the Department's equitable annual loading and share allocation must be based on tangible data.	The dry and wet-weather waste load allocations have been revised to allocate loadings among the different storm water permittees based on their percent area of the watershed, including Caltrans' right-of -way, as provided by Caltrans.
5.6	Caltrans	8/26/04	The economic analysis described in the TMDL staff report discounts the	The cost analysis is provided as a general

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			actual cost of installation of infiltration and sand filter systems documented by the Caltrans BMP Retrofit Report. Although a third party study did find that reported costs were lower in other areas, only the Department's facilities had actual bid cost estimates based on unit prices compiled from historical highway projects, which were very similar to the actual costs incurred. The TMDL draft staff report grossly under-estimates the cost of BMP implementation and does not consider lifecycle costs including operation and maintenance costs. Furthermore, the Department is limited in available land within its right-of-way, which may require purchase of additional land to accommodate the installation of BMPs.	estimate of the costs based on reasonable foreseeable compliance methods with the TMDL. The staff report does not discount the costs documented by Caltrans in their BMP retrofit study. The staff report compares the costs reported by Caltrans with costs calculated based on FHWA and EPA estimates then discusses possible reasons for the differences in costs based on conclusions drawn from the third party study. The staff report does provide a general estimate of operation and maintenance costs (see Tables 7-6, 7-7, and 7-8 of the staff report).
5.7	Caltrans	8/26/04	Ballona Creek is fully or partially lined with concrete over its entire length and could never fully support a natural aquatic system even if the water was of sufficient quality. Consequently, the TMDL proposed will not achieve the desired result.	See response to comment number 5.2. Moreover, if implemented, the TMDL will achieve the congressional policy that the discharges of toxic pollutants in toxic amounts be prohibited.
5.8	Caltrans	8/26/04	Section 2.1.1 of the TMDL lists Ballona Creek and Sepulveda Canyon Channel as having the potential to attain REC-1 or water contact recreation uses. Access to these waterbodies is prohibited by the Los Angeles County Department of Public Works. These areas are characterized by vertical or steeply sloped concrete walls, which form the channel bed. It is highly unlikely that these areas could safely support a REC-1 use in their current form, regardless of water quality.	See response to comment number 5.2.
5.9	Caltrans	8/26/04	Because of poor correlation between observed and predicted metal concentration in the dry weather flow model, waste load allocations were based on extremely limited empirical data. Only three sampling	The TMDL allows for special studies to refine sources assessments and to better estimate loading capacity. The results of

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			events, all during 2003, were used to characterize the existing dry-weather metals loading for Ballona Creek. It is also noted that metals concentrations and dry weather flows are 'very episodic." This indicates that more background data needs to be collected and analyzed before waste load allocations can be assigned.	these studies will be considered when the TMDL is reconsidered in year five. In addition, the first load reduction is not required until year six.
5.10	Caltrans	8/26/04	Transportation is not among the land use categories entered into the wet-weather model, but represents a hydrologically discrete land use that should be incorporated into the model. This is especially true since the Department and MS4s are held to specific waste load allocations.	Many land use categories that shared hydrologic or pollutant loading characteristics were grouped into similar classifications.
5.11	Caltrans	8/26/04	The wet-weather model selected for this TMDL is not typically applied to arid, urbanized watersheds. It is predominantly applied to perennially flowing streams with much more attenuated storm responses. This model also does not perform well at modeling smaller storms (<0.1"), which represent over a third of the storm events in the basin. A better understanding of the stream's response to stormwater flows is needed to accurately allocate waste loads.	The wet-weather model is not used in developing loading capacities or waste load allocations. The waste load allocations for wet-weather are based on a formula.
5.12	Caltrans	8/26/04	The TMDL assumes a water effects ration of 1, meaning that all of the measured metals are biologically available and toxic. This assumption may drastically over-state the actual toxicity of the concentrations that are observed. A site-specific ecotoxicological evaluation of the water effects ratios at Ballona Creek should be undertaken to ensure the accuracy of the aquatic life criteria.	The TMDL allows for special studies, due at year four, to determine site specific objectives. These special studies will be evaluated prior to reconsideration of the TMDL at year five.
5.13	Caltrans	8/26/04	The method of presentation of wet-weather load reductions (i.e. the load-duration curve) is ineffective and confusing. The concentration-based targets that are supposedly derived from these model-generated curves are apparent, but their determinations not clearly elaborated. More detail needs to be added to allow for comprehension of the model outputs.	See response to comment number 3.4. Please note that the concentration-based targets were used as input for the generated curves, and were not derived from them.
5.14	Caltrans	8/26/04	The economic analysis is based on an unsubstantiated assumption that	See response to comment number 3.11.

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			compliance can be achieved without structural controls for 60 percent of the watershed. The basis for this determination needs to be clarified.	
5.15	Caltrans	8/26/04	The economic analysis assumes that 20 percent of the watershed could be treated with infiltration facilities. The technical feasibility for implementing infiltration devices needs to consider site constraints such as soils conditions, proximity to groundwater, adequate maintenance access, and safety standards for motorists along the Department's facilities	Staff agrees, comment noted.
6.1	So Cal Gas	8/26/04	Putting waste load allocations on each construction site and each industrial permittee is not necessary to meet water quality objectives and places an unnecessary economic burden on the permittee. 40 CFR 130.2(h) does not require that every individual point source have a portion of the allocation. It is only necessary to allocate the loading capacity among individual point sources. A facility or site should be allowed to show that their storm water is not impairing the water quality or that BMPs are effective.	All permitted dischargers must be assigned a waste load allocation under a TMDL. (40 CFR 130.2(i)). With respect to benefits to be gained, the TMDL staff report demonstrates the significant impairment and metals loading. Achieving waste load allocations will benefit the environment by meeting CTR objectives in order to restore aquatic life beneficial uses. In the July 12, 2004 draft of the TMDL, general storm water permittees were assigned concentration-based waste load allocations. The larger dischargers were assigned both concentration- and mass-based allocations. In order to, better allocate loading among sources the staff report and BPA have been revised to assign mass-based waste load allocations to all storm water permittees, including the smaller general permittees. The allocations are divided among the permittees based on their percent area of the

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				watershed. General construction and industrial storm water permittees have been given a 10-year compliance schedule to achieve wet-weather allocations and interim waste load allocations based on EPA benchmarks.
6.2	So Cal Gas	8/26/04	The cost analysis does not discuss the increased costs to NPDES permittees for the additional monitoring and reporting.	Those costs are not part of this TMDL, and will be developed in further regional board actions. Further, to the extent monitoring is required in an NPDES permit to assure compliance with a TMDL or with any other NPDES permit requirements, those requirements are established pursuant to Water Code section 13383 and 13383.5 – neither of which is subject to the restrictions of Water Code section 13267.
6.3	So Cal Gas	8/26/04	The staff report does not discuss the applicability of the CTR to storm water and this should be addressed prior to any adoption.	See response to comment number 4.2.
6.4	So Cal Gas	8/26/04	The data indicates there is occasional and episodic impairments, which may be due to metal automotive components (brake linings, tire manufacturing, leaking automotive fittings, etc.) and due to indirect atmospheric deposition. These sources need to be addressed in a comprehensive way rather than allocating or assigning the load to the MS4 and NPDES permittees.	Permittees are responsible for storm water that they discharge to the Creek. For example, although permittees may have little control over sources of indirect atmospheric deposition of metals, once metals are deposited on land under the jurisdiction of a permittee, they are within a permittee's control and responsibility. Please note that permittees will not be deemed out of compliance if WLAs are not achieved. Permittees must only

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				demonstrate compliance with their permit requirements. The revised staff report and proposed BPA clarify that permit requirements will likely be in the form of BMPs. Permit writers must provide adequate justification and documentation to demonstrate that specified BMPs are expected to result in attainment of the waste load allocations. In addition, the TMDL establishes WLAs for a variety of discharges and LAs for nonpoint sources that contribute metal loading. It is anticipated that these will reduce metal loading through the MS4. To the extent sources outside the legal authority of local municipalities are contributing metals loading, the regional board will work with the affected dischargers to develop an effective strategy to address the metals loading. If necessary, the Regional Board can and will take direct enforcement action against other sources.
7.1	CICWQ	8/26/04	The proposed BPA inappropriately applies CTR to storm water discharges. CTR criteria were not intended to apply to storm water discharges, especially those not typically subject to numeric effluent limits, such as construction sites. Compliance should be based on BMPs.	See response to comment number 4.2.
7.2	CICWQ	8/26/04	Numeric effluent limits are infeasible for construction storm water	See response to comment number 4.7.

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			runoff. The proposed BPA provides no evidence that construction sites are a significant source of pollutants, resulting in waste load allocations for construction runoff that are arbitrary and capricious. The fact sheet for 99-08-DQW states that there is little evidence of pollutants present in storm water discharges from construction sites other than sediment, TSS and turbidity. EPA has also concluded that construction sites are not thought to be important sources of metal contamination. We are unaware that the Regional Board undertook any analysis that demonstrated a reasonable potential for construction site pollutants to cause or contribute to an excursion of water quality standards for metals. Nearly all metals that are associated with construction site discharges are generally tightly bound to suspended sediment, while the biologically toxic effects of heavy metal contamination have been associated with the dissolved fraction. Existing erosion control practices are required to reduce or prevent suspended sediment and erosion particles from reaching downstream waters.	While the CTR standards are expressed in terms of dissolved metals, the numeric targets are expressed in terms of total recoverable metals to address the potential for transformation between the total recoverable and the dissolved metals fraction.
7.3	CICWQ	8/26/04	The Regional Board has failed to adequately comply with sections 13241 and 13242 of the California Water Code.	See response to comment numbers 4.8 and 4.11.
7.4	CICWQ	8/26/04	The proposed BPA violates CEQA on two grounds: 1) The initial study/checklist prepared by the Regional Board is deficient and inadequately identifies potential significant impacts of the Proposed Amendment; and 2) the Regional Board failed to prepare and adopt the functional equivalent of and Environmental Impact Report or at a minimum a mitigated negative declaration despite the fact that the project will have significant environmental impacts.	See response to comment numbers 4.12 and 4.14.a.
7.5	CICWQ	8/26/04	The proposed Amendment specifies metals waste load allocations for reaches that are not on the 303(d) list.	See response to comment number 4.3.
7.6	CICWQ	8/26/04	In some cases, the proposed BPA develops allocations for reaches listed as impaired even though available data are inadequate to support such a	See response to comment number 4.4.

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			listing. This is inconsistent with the NRC's recommendations to Congress, stating listings should be evaluated for appropriateness and consistency prior to TMDL development.	
7.7	CICWQ	8/26/04	Ballona Creek is also improperly listed as impaired for selenium (Ballona Staff Report, Table 1-1 and 2-10). This listing is supported by only two chronic exceedances out of 55 samples over seven years.	See response to comment number 4.4.
7.8	CICWQ	8/26/04	Sepulveda Canyon Channel is inappropriately listed in the Ballona TMDL as impaired for lead under dry weather conditions. This listing is inappropriate because the only water quality data cited in the Ballona Staff Report for Sepulveda Canyon Channel indicates zero exceedances of CTR standards during dry weather. It is also worth noting that the most recent dry weather data collected by SCCWRP in 2003 suggests that neither Ballona Creek nor Sepulveda Canyon Channel demonstrated exceedances of CTR criteria for any metals	The dry weather data collected by SCCWRP for Sepulveda Canyon Channel was from three snap shot sampling events and is not sufficient for delisting at this time.
8.1	BIASD	8/26/04	The TMDL inappropriately applies CTR water quality objectives to stormwater. EPA never intended for CTR criteria to be applied through permit limits to storm water discharges, and the State SIP for CTR clearly states that the SIP does not apply to stormwater. Furthermore, neither the state and federal apply CTR limits in their general stormwater permits.	See responses to comment number 4.2. EPA's comment is taken out of context. In establishing the CTR, the EPA was carrying out its obligation to establish numeric water quality criteria for priority pollutants. Those numeric criteria are now a component of California's water quality standards, and they are the applicable water quality standards that must be implemented under section 303(d)(1)(C) of the Clean Water Act. The reference to EPA's rulemaking for the CTR simply states that EPA was not deciding how storm water dischargers must

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				meet water quality standards—that was beyond the scope of the rulemaking. EPA's comment does not mean the subject water quality standards are not water quality standards applicable to storm water discharges. Clearly, under section 303(c) and 303(d) of the Clean Water Act, the CTR is the applicable water quality standard.
8.2	BIASD	8/26/04	The CEQA economic analysis fails to take into account land costs for public dischargers to implement BMPs, essentially ignores compliance costs for private dischargers and does not evaluate the impacts on the local economy.	See responses to comment number 4.11.a.
8.3	BIASD	8/26/04	The TMDL fails to provide a reasonable assurance that its implementation will result in significant improvements in water quality, or in attainment of water quality standards.	The TMDL is specifically designed to achieve water quality standards. Technical aspects of the TMDL document the metals loading that occur in wet and dry weather and the reductions necessary to achieve federal water quality standards. Because the TMDL is reduction based (i.e., it focuses on reducing the metals loading), it by definition provides a framework for attaining water quality standards. The implementation period has been structured to provide sufficient time for these activities to occur. While the staff anticipate that BMPs may be sufficient to achieve water quality standards for many dischargers, the implementation period provides time for

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				treatment technologies to be used, if subsequently found to be necessary.
8.4	BIASD	8/26/04	There are deficiencies in both dry and wet weather modeling. Although the models used were scientifically valid, their utility is severely hampered by a lack of data and by inadequate calibration and validation. The modeling is not sufficient or appropriate to support the allocations and implementation mechanisms proposed. It seems that the modeling was not even used in the development of allocations.	The purpose of the model is to present a reasonable assurance that the relationship between in-stream loads and the targets are understood, which it does. The TMDL allows for special studies to provide data to refine the model and account for any weaknesses.
8.5	BIASD	8/26/04	The modeling did not consistently or accurately reproduce the hydrologic behavior of the watershed, such that the modeling cannot be used to determine the impacts of the TMDL or of the implementation measures proposed. There are also inconsistencies between the mass- and concentration–based waste load allocations, such that water quality standards may not be attained through their implementation.	Both the wet- and dry-weather models accurately predict the hydrologic behavior of the watershed. The model will continue to be refined, as more data becomes available. For the purpose of the proposed TMDL, the model is an effective tool in the linkage analysis. The model presents a reasonable assurance that the relationship between in-stream loads and targets are understood.
8.6	BIASD	8/26/04	Allocations should not be assigned for storm water discharges. Rather, reliance on a BMP-based approach would be most appropriate for these highly variable, intermittent, and complex wet weather flows.	See response to comment number 3.1.
8.7	BIASD	8/26/04	The TMDL improperly holds dischargers accountable for sources beyond their control or influence such as aerial deposition and background levels.	See response to comment number 6.4.
8.8	BIASD	8/26/04	The TMDL fails to address how the concentration-based allocations will be implemented in NDPES permits. It is difficult to envision a method that does not impose the concentration-base allocations as numeric limits in NPDES permits.	See response to comment number 3.1.

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8.9	BIASD	8/26/04	Industrial stormwater dischargers likely cannot consistently meet the proposed concentration-based load allocations given the substantial variability of storm water volume and pollutant loading.	Concentration-based load allocations are no longer assigned to general industrial and construction storm water dischargers. In order to, better allocate loading among sources the staff report and BPA have been revised to assign mass-based waste load allocations to all storm water permittees, including the smaller general permittees. The allocations are divided among the permittees based on their percent area of the watershed. General construction and industrial storm water permittees have been given a 10-year compliance schedule to achieve wet-weather allocations and interim waste load allocations based on EPA benchmarks. The BPA and staff report have been revised to reflect the expectation that permit writers will translate waste load allocations into permit limits in the form of BMPs. Permit writers must provide adequate justification and documentation to demonstrate that specified BMPs are expected to result in attainment of the waste load allocations.
8.10	BIASD	8/26/04	No de-listing was done for reaches where the data do not support listing.	See response to comment number 4.4.
8.11	BIASD	8/26/04	Allocations were inappropriately developed for reaches that are not listed.	See response to comment number 4.3.
8.12	BIASD	8/26/04	The TMDLs were developed with limited stakeholder involvement from the discharger community, counter to SWRCB draft guidance for	The TMDL shall be adopted in accordance with applicable administrative procedures,

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			TMDL development.	with full public participation and consideration of the capabilities of all permittees. See also response to comment number 1.1.
8.13	BIASD	8/26/04	The TMDL does not propose a watershed improvement action plan that treats dischargers equitably-rather, small and large dischargers should receive similar compliance schedules, BMPs should be specified as the appropriate control mechanism for storm water dischargers, and monitoring and compliance requirements should be established. TMDL goals for dischargers should be established only when there exists a sufficient and defensible scientific and technical basis.	See response to comment number 3.1. In addition, general construction and industrial storm water permittees have been given a 10-year compliance schedule to achieve wet-weather allocations and interim waste load allocations based on EPA benchmarks.
8.14	BIASD	8/26/04	The SIP does not apply to regulation of stormwater discharges and was not intended to be applied without consideration of dilution or as never-to-be exceeded values. Further, in adopting the CTR, EPA intended to allow periodic exceedances of CTR criteria. The application of CTR to stormwater in the metals TMDL is inappropriate.	See response to comment number 8.1.
8.15	BIASD	8/26/04	The TMDL specifies metals waste load allocations for reaches that are not on the 303(d) list.	See response to comment number 4.3.
8.16	BIASD	8/26/04	In some cases the TMDL develops allocations for reaches listed as impaired even though available data are inadequate to support such a listing.	See response to comment number 4.4.
8.17	BIASD	8/26/04	The economic analysis in the TMDL is deficient on several counts. First, the estimated costs of structural BMPs neglect the cost of land that would be required to implement the BMPs. Second, conventional structural BMPs may be inadequate to consistently achieve CTR limitations, in which case more expensive treatment options-such as reverse osmosis (RO)- would need to be considered, pushing costs far beyond those estimated in the TMDL. Third, the analysis makes no effort to evaluate the impact of the TMDL on the local economy through	See response to comment numbers 3.35 and 4.11.a.

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			loss of jobs caused by increased costs of compliance and increased taxes and assessments for local residents and businesses.	
8.18	BIASD	8/26/04	The concentration-based waste load allocations in the TMDL for facilities and operations under an NPDES permit will impose permit conditions that cannot be consistently complied with under all conditions likely to be encountered. We do not believe that current technology for the control of storm water can, on a consistent basis, discharge storm water with pollutants at CTR levels due to the highly variable nature of storm water.	See response to comment number 8.9.
8.19	BIASD	8/26/04	NPDES permittees will be required to spend significant amount of money, even though it will likely make little difference in improving water quality in the short-term. Several major sources of metals, such as aerial deposition, affect all land uses. It makes no sense to put costly stringent control on sources representing only a small percentage of the total land use and at the same time to disregard a major source.	See response to comment numbers 3.34, 4.5, and 6.4.
8.20	BIASD	8/26/04	The TMDL provides non-NPDES regulated storm water discharges a 15-year compliance schedule to meet allocations as proposed. However, no compliance schedule has been included for other sources such as industrial activities.	General construction and industrial storm water permittees have been given a 10-year compliance schedule to achieve wet-weather allocations and interim waste load allocations based on EPA benchmarks.
8.21	BIASD	8/26/04	In some cases actions that would most directly and thoroughly reduce metals concentrations in the creek, such as development of alternative brake pad materiel, are beyond the regulatory control of the agencies responsible for implementing the TMDL.	See response to comment number 6.4.
8.22	BIASD	8/26/04	The dry weather modeling conducted in support of the Los Angeles River metals TMDL contains a flow calibration that appears to be inadequate. The model is not able to reproduce dry weather flow rates in a precise way and tends to predict high and not average or median dry weather flows.	Comment is specific to the Los Angeles River Metals TMDL and is not applicable to the Ballona Creek Metals TMDL.

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8.23	BIASD	8/26/04	The wet weather modeling conducted in support of the Los Angeles River metals TMDL does not adequately reproduce empirical data describing watershed hydrology and water quality. In multiple cases, the model did a poor job of reproducing monthly flow rates and annual flow volumes and in most cases the model did a poor job of reproducing the observed average daily flow rate record.	Comment is specific to the Los Angeles River Metals TMDL and is not applicable to the Ballona Creek Metals TMDL.
8.24	BIASD	8/26/04	It appears that the dry and wet weather modeling described in the TMDL staff report were not utilized in the development of load and waste load allocations. Wet weather load allocations seem to consist simply of the modeled flow for a given storm event multiplied by the CTR concentration. These allocations mean that for any given storm event, the allowable metals load is that which would occur if the event mean concentration were the CTR concentration.	See response to comment number 8.5. In addition, the staff report has been revised to clarify that the wet-weather model is not used in developing loading capacities. The waste load allocations will be reconsidered in year 5 based on refinements to the model and other special studies.
8.25	BIASD	8/26/04	The TMDL makes the assumption that loads from non-urban areas in the watershed would be insignificant under both dry weather and wet weather conditions. However, no data are used to support this assumption, and data from another study seems call this assumption into question.	See response to comment number 3.34.
8.26	BIASD	8/26/04	In summary, there are serious shortcomings in the TMDL and accompanying documentation. Data are lacking, the modeling has significant uncertainties, and the load allocations are inappropriate and inconsistent. In fact the TMDL recognizes these and other deficiencies by stating that it is expected the TMDL will be reopened sometime in the future as more data and the better science are developed.	The proposed TMDL is based on sound science and was based on the input of numerous stakeholders. Numeric targets have been set to achieve water quality objectives as contained in CTR and are based on site specific conditions in Ballona Creek. The assimilative capacity was assessed by calculating the loading capacity of Ballona Creek during dry and wet weather. Seasonal variation has been addressed by developing separate waste

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				load allocations for dry and wet weather. Critical conditions were addresses by assigning a critical flow during dry-weather and by using a load-duration curve approach for wet weather. The scientific portions of the TMDL have been peer reviewed by two external peer reviewers in conformance with Health & Safety Code section 57004.
9.1	CMTA	8/26/04	The proposed TMDL does not provide for the use of an iterative BMP process for industrial NPDES permit holders. Because the TMDL does not include a process for how to translate the concentration-based allocations into permit conditions, it must be assumed that concentration-based allocations will become numeric end-of-pipe limits. There is currently no technology that can consistently meet discharge limits at CTR levels.	See response to comment number 6.1. In addition, industrial non-storm water NPDES permittees already are or will be in the next permit subject to CTR numeric based limits – regardless of whether this TMDL because effective.
9.2	CMTA	8/26/04	The CEQA economic analysis is extremely deficient because it did not include any economic analysis for industrial discharges with NPDES permits. Further, it does not address the regional economic impacts.	See response to comment number 4.11.a.
10.1	HTB	8/26/04	The TMDL for metals in the water column and the TMDL for metals in sediments should be developed and reviewed concurrently.	The Ballona Creek Metals TMDL and the Ballona Creek Estuary Toxic Pollutants TMDL were developed concurrently and will be scheduled for the same Board Meeting.
10.2	HTB	8/26/04	Median hardness was used to adjust the CTR criteria for dry-weather loading. We would like to see the overall variability in the data, since the minimum or 10^{th} percentile hardness values may be significantly lower than the median value. This could lead to acute toxicity to aquatic organisms at times of low hardness.	The 10^{th} and 90^{th} percentile hardness value for dry-weather is 220 mg/L and 410 mg/L, respectively.
10.3	HTB	8/26/04	It is not clear how saltwater CTR criteria will be met in the estuary,	Since, the Ballona Creek Estuary is not

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			which receives flow from upstream reaches where the less-stringent freshwater CTR criteria apply. This is important because the toxicity of metals depends strongly on salinity, and the saltwater criteria for copper and silver are substantially lower than the freshwater criteria. The TMDL must clarify how saltwater standards for these metals will be achieved in the estuary.	listed for metals in the water column all references to saltwater numeric targets and WLA have been removed from the proposed BPA and revised staff report.
10.4	HTB	8/26/04	All the data reviewed in the TMDL comes from studies by SCCWRP conducted in 2003. Were other data analyzed, including data from UCLA (Suffet, Stenstrom), LMU (Dorsey) and the Santa Monica Baykeeper? If so, were the data comparable and consistent with the SCCWRP data? Summaries of these data should be included in the TMDL.	All the data that was reviewed during the development of the TMDL was summarized in section 2.2 of the revised staff report.
10.5	HTB	8/26/04	Detection levels for cadmium, copper, lead and selenium were often greater than the hardness-adjusted CTR criteria. In these cases, the Regional Board did not use the more conservative and widely accepted assumption that metals concentrations were equal to the detection level or equal to half the detection level. The conservative assumption greatly increases the number of exceedances	Section 2.2 contains general statements regarding which detection limits are greater then the CTR criteria. TMDLs are developed for all 303(d) listed metals in Ballona Creek and Sepulveda Canyon Channel. In addition, WLAs are developed for the 303(d) listed metals in all upstream reaches, in order to, meet the downstream TMDLs.
10.6	HTB	8/26/04	Only concentration-based WLAs are given for minor and general NPDES permits. Therefore, as part of the TMDL these dischargers must be required to monitor flow every time there is a discharge event, so that load-based WLAs can be defined in the future.	The staff report and BPA have been revised to assign mass-based waste load allocations to the general industrial and construction storm water permittees for the purposes of better allocating the loading capacity. Based on a review of discharge monitoring reports for the minor and non-storm water NPDES permittees, it is not possible to

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				assign mass-based allocations based on their variable intermittent flows. These sources will have a minor impact on metals loading if they are limited by concentration to the applicable CTR-based WLAs.
10.7	HTB	8/26/04	The only margin of safety in this TMDL is an implicit one, provided by three different assumptions made in the development of the TMDL. However, there were at least three assumptions in the TMDL development that were far from conservative. Therefore, we feel that an explicit margin of safety of at least 10% is required in this TMDL.	TMDLs may include implicit and/or explicit margins of safety. The proposed metals TMDLs apply an implicit margin of safety through several conservative assumptions made in calculating the numeric target. Although staff did not select the most conservative parameters at each decision point, the hardness and translator selected were representative of site specific conditions. We not that during wet weather, the selected hardness of 77 mg/L is more than 20% below and more conservative than the CTR default harness value of 100 mg/L.
10.8	HTB	8/26/04	Ten to 15 years is a very long time to meet water quality standards. The dry-weather targets should be met much sooner, since the main contributors to dry-weather loading are dewatering activities, nuisance runoff flows, and minor discharge permits. The implementation schedule should require, as the first major milestone, that 50% of the total *developed* land shall achieve dry-weather compliance, and 25% of the total *developed* land shall achieve wet-weather compliance. This avoids giving credit for compliance in open space areas, which are largely non-contributors of metals.	The staff report and BPA have been revised to reflect this change.
10.8.a	HTB	8/26/04	The first milestone of 50% dry-weather compliance and 25% wet-	Due to the nature of the waste load

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			weather compliance for total developed areas should be achieved at 4-5 years after the effective date of the TMDL. The re-opener is schedule at 6 years, and it only makes sense to re-evaluate the TMDL after the first milestones are reached, rather that in the very same year they are required.	allocations and the implementation schedule for the MS4 and Caltrans permittees, the first compliance deadline is not proposed to occur prior to the reconsideration. Since, it is possible for the metals allocations to change in the reconsideration of the proposed metals TMDL. In addition, the percent-based reductions in the metals TMDL are area-based and the implementation schedule requires compliance with the final waste load allocation in each percentage area. Therefore, permittees could potentially be required to meet waste load allocations in year five that could increase a year later based on the results of special studies. Please note that the reconsideration of the TMDL has been rescheduled to occur in year five, while the first compliance milestone for the MS4 and Caltrans permittees remains at year six.
10.9	HTB	8/26/04	There is only one compliance point, located in the lower reaches, in each subwatershed. This will not detect upstream exceedances that are subsequently diluted by inputs with lower concentrations of metals. There should be required monitoring further upstream in each subwatershed.	See response to comment number 3.9.
10.10	HTB	8/26/04	Extensive toxicity testing and TIE work will be necessary to determine whether this TMDL for metals addresses the toxicity impairment in Ballona Creek and toxicity bioassays and TIE efforts should be included	See response to comment number 3.9. Also note that TIE analysis has been included in the Ballona Creek Estuary Toxics Pollutants

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			in the monitoring plan for this TMDL.	TMDL for sediment.
11.1	Miller	8/26/04	The Regional Board must set meaningful limits on the accumulation of toxic heavy metals in the water and sediment of Ballona Creek.	See response to comment number 10.1.
12.1	WSPA	8/26/04	The proposed TMDL improperly, arbitrarily, and unreasonably imposes concentration-based allocations at the CTR levels for storm water discharges without any translation mechanism suggesting that they will be implemented as never-to-be-exceeded end of pipe limits.	See response to comment numbers 3.1 and 4.2.
12.2	WSPA	8/26/04	The proposed TMDL improperly, arbitrarily, and unreasonably fails to consider that the reduction of some metals requires actions beyond the dischargers control.	See response to comment number 6.4.
12.3	WSPA	8/26/04	Smaller storm water dischargers are improperly, arbitrarily and unreasonably treated more stringently than the larger dischargers without commensurate environmental benefit.	All permitted dischargers must be assigned a waste load allocation under a TMDL. (40 CFR 130.2(i)). With respect to benefits to be gained, the TMDL staff report demonstrates the significant impairment and metals loading. Achieving waste load allocations will benefit the environment by meeting CTR objectives in order to restore aquatic life beneficial uses. Previously, general storm water permittees were assigned concentration-based waste load allocations. The larger dischargers were assigned both concentration- and mass-based allocations. In order to better allocate loading among sources, the staff report and BPA have been revised to assign mass-based waste load allocations to all storm water permittees, including the smaller general permittees. The allocations are

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				divided among the permittees based on their percent area of the watershed. General construction and industrial storm water permittees have been given a 10-year compliance schedule to achieve wet-weather allocations and interim waste load allocations based on EPA benchmarks.
12.4	WSPA	8/26/04	Natural sources were not properly considered.	See response to comment numbers 3.34 and 4.5.
12.5	WSPA	8/26/04	Waste load allocations are being improperly imposed on non-listed reaches.	See response to comment number 4.3.
12.6	WSPA	8/26/04	Economic impacts were not properly considered.	See response to comment numbers 3.9, 4.11, 4.11.a, and 6.2.
12.7	WSPA	8/26/04	The technical analysis and models fail to support the Regional Board's decision making.	The technical analysis is scientifically sound and supports the TMDL. All assumptions are clearly stated in the staff report. The staff report has been revised to clearly state the purpose of the modeling analysis. Further, the TMDL's scientific portions have been subjected to external scientific peer review in conformance with Health and Safety Code section 57004.
12.8	WSPA	8/26/04	The Regional Board did not follow the proper process for establishing TMDLs. The proper process is to scientifically determine a TMDL "number" and then develop discharge criteria by which individual dischargers can help meet that goal. CTR allocations were assigned rather than scientifically determining the pollutant contribution from all the sources and equitably assigning allocations.	The staff report and BPA have been revised to assign allocations to all point and nonpoint sources in the watershed. However, the total loading capacity of the Creek is still based on CTR-based numeric targets. Because Ballona Creek is impaired due to exceedances of CTR objectives,

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				there is no excess assimilative capacity to provide dilution during critical conditions. The loading capacity is therefore equal to the critical flow times the CTR-based numeric target. Each source is assigned a portion of the total loading capacity.
12.9	WSPA	8/26/04	The TMDLs are arbitrary, capricious, unsupported by evidence, contrary to law, and unreasonable. The reasoning and technical explanations proffered in the TMDLs simply do not support the conclusions and proposed limitations.	See response to comment number 12.7.
12.10	WSPA	8/26/04	The TMDL does not meet the underlying requirement of "Reasonableness". The State Board and Regional Boards are statutorily mandated to regulate water quality in a reasonable manner which takes into account all demands on those waters as well as the total values involved including economic factors. (CWC Sections 13000, 13001, 13160 and 13225.)	Regional Board staff disagree that the requirements are not reasonable. It is express national policy that the discharges of toxic pollutants in toxic amounts be prohibited. (33 U.S.C. § 1251(a)(3).) In light of Congressional policy, it would be unreasonable to allow the prohibition to continue to be disregarded. Further, the proposed TMDL allows some latitude for BMPs and includes a lengthy implementation period to achieve the Congressional policy. These are reasonable actions. The commentor's citation to Water Code section 13160 is inappropriate because the portion of section 13160 the commentor relies upon applies only to water quality certifications—not to NPDES permits or

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				TMDLs. Likewise, Water Code section 13225 is not a basis for the TMDL. To the extent there is any subsequent monitoring required of a discharger, it would be pursuant to Water Code sections 13267 and 13383 —which apply to all dischargers. Finally, Water Code sections 13000 and 13001 establish broad policies for the state. Implementing the Federal Clean Water Act is consistent with that policy and required. The TMDL is reasonable.
12.11	WSPA	8/26/04	It is inappropriate to directly apply CTR numeric standards as never-to-be-exceeded end-of-pipe limitations, especially without consideration of dilution in the receiving water, as this was never contemplated when CTR was adopted. Without clear guidance that specifies iterative BMPs as the translation of CTR allocations, CTR numeric values are likely to be the default permit conditions.	See response to comment number 4.2.
12.12	WSPA	8/26/04	The TMDL unfairly holds permittees responsible for sources that are out of their control and does not consider background and ambient air deposits of metals. The commentor cited *Communities for a Better Env't v. State Water Resources Control Board* as precedent that WSPA member companies' storm water may serve as a "conveyance of metals from other sources."	See response to comment numbers 3.34, and 4.5.
12.13	WSPA	8/26/04	Smaller storm water dischargers are treated disproportionately to larger dischargers and natural sources. The largest storm water dischargers are provided more flexibility than smaller dischargers. The TMDL indicates that the criteria will not be enforced against large dischargers for storms greater than 10-year storms, and they will be allowed a phased compliance plan. Smaller dischargers will have waste load	See response to comment numbers 3.3, 3.34, 4.5, and 12.3. The TMDL does not provide any assurance that permit limits will not be enforced or that permits will make allowances for dischargers during 10-year storms.

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			allocations incorporated into their permits immediately upon renewal of their NPDES permits. Natural sources are not adequately addressed as a source, including aerial deposition of metals on natural areas and metals concentrations in natural soils.	
12.14	WSPA	8/26/04	The TMDL specifies waste load allocations for metals that are not on the 303(d) list. Many of the impaired water listings are unsupported or contradicted by available data. Imposing waste load allocations for non-impaired waters or unproblematic constituents is arbitrary, capricious, unsupported by evidence, contrary to law, and unreasonable.	See response to comment numbers 4.3 and 4.4.
12.15	WSPA	8/26/04	The economic analysis is incomplete under CEQA. It does not take into account the "reasonable range" of economic consequences of the reasonable foreseeable methods of compliance. The estimated costs fail to include the real costs of land required to implement structural BMPs. A rough estimate provides land acquisition costs equal to approximately $884 million. There is no discussion of more stringent and costly treatment such as reverse osmosis. There is no analysis of the impact on the local economy through costs incurred by industrial and construction dischargers. Much of the analysis has no application to affected stakeholders such as WSPA member companies.	See response to comment number 4.11.a.
12.16	WSPA	8/26/04	There are numerous deficiencies in the technical analyses used to justify the TMDLs. The models used have various flaws of lack requisite information needed to derive the conclusions. Included in comments is a technical review completed by Flow Science, Inc, which provides proof that the TMDLs are arbitrary and capricious, unsupported by evidence, contrary to law, and unreasonable.	See response to Flow Science comments numbers 4.20 through 4.30.
13.1	Sustainable Conservation/ Brake Pad Partnership	9/1/04	The potential implementation strategy that "permittees could sponsor legislative actions with state and federal agencies to pursue the development of alternative materials for brake pads" could undermine the efforts of the Brake Pad Partnership. The Regional Board should	The staff report has been revised to remove the suggestion that permittees work with state and federal agencies to pursue alternative brake pad materials. The revised

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			recommend participation in the Brake Pad Partnership, a multi-stakeholder effort in the San Francisco Bay as a potential implementation strategy.	staff report acknowledges the efforts of the Brake Pad Partnership.
14.1	HTB Form Letter		The Regional Board must set meaningful limits on the accumulation of toxic heavy metals in the water and sediment of Ballona Creek.	See response to comment number 10.1.
Rutan & Tucker (CPR Cities) comments on LA River Metals TMDL incorporated by reference into record for Ballona Creek Metals TMDL at 9/2/04 Workshop.				
15.1	Rutan & Tucker (Cities)	8/26/04	The proposed TMDL is contrary to federal and state law and represents impracticable and ambiguous regulatory requirements, developed without appropriate consideration of the economic, social, and environmental impacts that may result, and without reliance upon scientifically valid data.	The proposed TMDL shall be adopted in accordance with applicable federal and state laws. The requirements are clear and their implementation is detailed in the proposed BPA. The proposed TMDL is based upon scientifically valid data and has undergone peer review. The economic, social, and environmental impacts shall be considered as required by law and in order to address the concerns of numerous stakeholders.
15.2	Rutan & Tucker (Cities)	8/26/04	The CWA only permits California to develop a TMDL for a listed water body, and TMDLs established for unlisted water bodies may be adopted for informational purposes only. (33 U.S.C. 1313(d)(3).)	See response to comment No. 4.3.
15.3, 15.14, and 15.26	Rutan & Tucker (Cities)	8/26/04	The proposed TMDL is contrary to law. The staff report provides no estimates of the amount of pollutants entering the Los Angeles River. No assimilative capacity study has been conducted. Insufficient "scientifically valid data" exists on the true sources of the pollutants in question. The TMDL appears to be based on limited data. Numerous assumptions are developed to address "occasional exceedances" of CTR. Numeric objectives are not yet "suitable for calculation" and the TMDL has not been developed based on scientifically valid data. The TMDL fails to include a defined "translator" necessary to allow for the	The proposed BPA and staff report analyze the amount of pollutants entering the watershed (see for example the Source Assessment, Linkage Analysis and Pollutant Allocation sections of the staff report.) An assimilative capacity study was conducted. The assimilative capacity is equal to the hardness-adjusted CTR-based numeric target times a critical flow for dry

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			conversion of a narrative water quality standards into a pollutant specific numeric effluent limitation as required by 40 C.F.R. § 122.44(d)(1)(vi). The TMDL is based on data which indicates that there are only occasional exceedances of copper and lead during dry-weather conditions, a single exceedance for cadmium in the Burbank Western Channel during dry weather and occasional exceedances of CTR criteria from storm water for copper, lead, and to a lesser extent for zinc and cadmium.	weather and a range of flows for wet weather. Sufficient data was used, and where data was limited, assumptions were clearly stated. Translators were used to convert from dissolved CTR objectives to total recoverable metals numeric targets. The commenter appears to conflate narrative and numeric water quality standards in discussing translators. Here the specific water quality standards that must be implemented pursuant to section 303(d)(1)(C) of the Clean Water Act are the numeric water quality standards established in the CTR. See also response to comment No. 4.3.
15.4	Rutan & Tucker (Cities)	8/26/04	Contrary to federal law, the TMDL provides no load allocation or implementation measures for non-point sources.	See response to comment No. 3.34.
15.5	Rutan & Tucker (Cities)	8/26/04	EPA's national policy is that all TMDLs are expected to provide reasonable assurances that they can and will be implemented in a manner that results in attainment of water quality standards and the waste load allocations are to be technically feasible. The state is to evaluate how waste load allocations will be translated into NPDES permit limits as part of the implementation plan.	See response to comment No. 3.1. Section 303(d)(1)(C) and USEPA policy require as an absolute minimum that the TMDL and its load allocations meet standards. There EPA guidance acknowledges flexibility in considering different allocation schemes to achieve the TMDL, and technical feasibility among different sources may be taken into account in choosing among different allocation schemes. Here the TMDL and

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				WLAs are set at the level necessary to meet the applicable water quality standards, and by incorporating an implicit margin of safety the TMDL provides a reasonable assurance that the water quality standards will be met. Regional Board staff are not aware of any "technical feasibility" considerations that would result in a different allocation scheme that would nonetheless meet water quality standards.
15.6	Rutan & Tucker (Cities)	8/26/04	EPA recommends that the consideration of potential non-point source measures and approaches and the effectiveness of available management practices will assist in the evaluating the practicability of load allocations.	Comment noted.
15.7	Rutan & Tucker (Cities)	8/26/04	According to the November 22, 2003 EPA guidance memo, water quality based effluent limits for NPDES-regulated municipal storm water discharges should be in the form of BMPs and the TMDL reflect this. The proposed TMDL sets numeric water quality targets based on CTR objectives. According to EPA, with respect to CTR, end-of-pipe treatment costs for storm water are inappropriate. The proposed TMDL is contrary to law as it in issue is a set of water quality based effluent limits to be imposed through municipal NPDES permits for occasional exceedances of CTR criteria.	See response to comment Nos. 3.1 and 4.2. The comment distorts the plain language of the EPA guidance memorandum. The memorandum, by its own terms is not a regulation and is not applicable to states, so even if the commenter correctly construed the memorandum, it would not provide a basis for deeming the TMDL "contrary to law." However, the regional board has considered the memorandum in establishing this TMDL. The memorandum explicitly states that WLAs should be expressed numerically. The memorandum continues by noting EPA's expectation is that the TMDL will include language allowing

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				WLAs to be converted into non-numeric BMPs in individual permits. The TMDL specifically allows this for municipal storm water dischargers. Contrary to the commenters assertion, the TMDL is not a set of "water quality-based effluent limitation." The commenter is conflating WLAs in a TMDL, with a more specific "water quality-based effluent limitation," which is derived in a permit. EPA recognizes in their regulations that a WLA is a "type" of water quality-based effluent limitation, but that they clearly have different applications. WLAs are a planning concept. WQBELs are a permitting concept. The November 22 guidance memorandum from USEPA acknowledges this distinction.
15.8	Rutan & Tucker (Cities)	8/26/04	The proposed TMDL violates CWC section 13241 and CEQA because economic factors were not considered.	See response to comment Nos. 4.11 and 4.11.a.
15.9	Rutan & Tucker (Cities)	8/26/04	The proposed TMDL violates CWC sections 13165, 13225(c) and 13267 because a cost benefit analysis was not performed.	See response to comment No. 3.9. Water Code section 13165 is not applicable to this TMDL. Not only does the TMDL not rely upon Water Code section 13165, but it could not. The TMDL is being established by the Regional Board. Water Code section 13165, does not apply to the Regional Board; it only applies to the State Board.

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				Further, the proposed BPA does not specify a technical monitoring program or report to be provided by local agencies.
15.10	Rutan & Tucker (Cities)	8/26/04	The proposed TMDL violates CEQA because not all potentially significant adverse environmental impacts and mitigation measures have been considered.	See response to comment No. 2.23, and responses to specific CEQA comments throughout this document.
15.11	Rutan & Tucker (Cities)	8/26/04	The Metals TMDL is improperly based on CTR as the CTR and SIP are not to be applied to storm water discharges. In response to comments on CTR, EPA stated that it is premature to project that storm water discharges would be subject to strict numeric water quality based effluent limits and that the applicability of water quality standards is outside the scope of the rule.	See response to comment No. 4.2. EPA's comment is taken out of context. In establishing the CTR, the EPA was carrying out its obligation to establish numeric water quality criteria for priority pollutants. Those numeric criteria are now a component of California's water quality standards, and they are the applicable water quality standards that must be implemented under section 303(d)(1)(C) of the Clean Water Act. The reference to EPA's rulemaking for the CTR simply states that EPA was not deciding how storm water dischargers must meet water quality standards—that was beyond the scope of the rulemaking. EPA's comment does not mean the subject water quality standards are not water quality standards applicable to storm water discharges. Clearly under section 303(c) and 303(d) of the Clean Water Act, the CTR is the applicable water quality

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				standard.
15.12	Rutan & Tucker (Cities)	8/26/04	The proposed TMDL fails to include in the implementation plan maximum extent practicable BMPs as required by 1342(p)(3)(B) of the CWA. The TMDL Document includes no discussion of the MEP standard and there is no consideration of the practicability of complying with the end-of-pipe treatment approaches set forth in the implementation portion of the TMDL.	TMDLs are planning tools under section 303 of the CWA that shall be established solely "to implement the applicable water quality standards with seasonal variations and a margin of safety." (33 U.S.C. 1313(d)(1)(C).) TMDLs are not limited by the maximum extent practicable technology standard of section 402(p)(3)(B)(iii) of the CWA. Moreover, CWA section 402(p)(3)(B)(iii) requires that MS4 dischargers "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, *and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants*." (Emphasis added.) Even if section 402(p)(3)(B) applied to this TMDL, federal and state courts have uniformly held that the italicized portion of section 402(p)(3)(B) allows NPDES permitting authorities (such as the state) to require compliance with water quality standards. (*Defenders of Wildlife v. Browner* (9th Cir.1999) 191 F.3d 1159 & *BIA v. SWRCB* (2004) 124 Cal.App.4th 866.) When dealing with an impaired water

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				body, it is not only "appropriate" under section 402(p)(3)(B) to include other water quality-based requirements, but consistent with the Clean Water Act's purposes of restoring and protecting our nations waters and the national policy to prohibit discharges of toxic pollutants in toxic amounts, the additional water quality-based requirements would be compelled under section 303(d) of the CWA. The revised BPA and staff report reflect the expectation that storm water permit writers will translate waste load allocations into permit limits in the form of BMPs. Permits will only contain WQBELs if permit writers cannot provide adequate justification and documentation to demonstrate that specified BMPs are expected to result in attainment of the waste load allocations.
15.13, 15.16, and 15.17	Rutan & Tucker (Cities)	8/26/04	The proposed TMDL is inconsistent with requirements under CWC sections 13241 and 13000 to only impose "reasonable". There is no discussion in the TMDL Document or BPA of obtaining the highest water quality which is reasonable, considering all of the demands being made on those waters, and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. Moreover, federal law required an economic analysis for both point and non-point sources when TMDLs are adopted (40 CFR 130.6(c).).	See response to comment Nos. 4.11 & 12.10. Regional Board staff believe it is not only reasonable, but necessary to carry out the express requirements of Congress to establish TMDLs at a level that implement existing water quality standards (33 U.S.C. 1313(d)(1)(C)) and to carry out national

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				policy to prohibit the discharge of toxic pollutants in toxic amounts (33 U.S.C. 1251(a)(1)(3).) While no cost-benefit analysis is required, economic studies demonstrate that that are a variety of means to achieve water quality standards, but to the extent there are significant costs associated with achieving water quality standards, those costs are outweighed by the relative benefits to be gained. To the extent there is any objective reasonableness requirement in Water Code section 13000, the TMDL is reasonable. However, it is important to recall that this general statement, which appears amongst loft goals such as 'waters of the state shall be protected for use and enjoyment by the people of the state," must give way to specific requirements. In this case, the specific requirement is spelled out in superior federal law, which requires that the TMDL implement the federal CTR. Moreover, the citation to 40 CFR 130.6(c), is misleading. Subdivision (c) of section 130.6 does not place any requirements on the development of TMDLs. In fact, the only portion of that subdivision relevant to TMDLs is that they be incorporated into water quality management plans (40 CFR

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				130.6(c)(1)). The other provisions that the commenter is presumably relying upon are subsections applicable to areawide waste treatment plans; however, those section 208 plans are the responsibility of the Southern California Association of Governments.
15.15	Rutan & Tucker (Cities)	8/26/04	The Metals TMDL in question is contrary to law as a cost/benefit analysis has not been conducted and as the other requirements of sections 13267, 13225, and 13165 have not been met.	See response to comment No. 3.9 and 15.9. Further, when the regional board subsequently issues monitoring orders, it will only need to consider whether there is a reasonable relation between the burdens of providing the technical reports and monitoring programs and the benefits to be gained from the information. In other words, these sections have no application to anything other than monitoring
15.18	Rutan & Tucker (Cities)	8/26/04	The requirements of CEQA have not been met as discussed in the following specific comments.	See responses to specific comments.
15.19	Rutan & Tucker (Cities)	8/26/04	The Board has segmented the project in violation of CEQA. The Board has done this by adopting individual TMDLs as separate projects for the Los Angeles River. The Board should evaluate the environmental impacts of developing all the TMDLs for the river at once.	See response to comment No. 4.12.
15.20	Rutan & Tucker (Cities)	8/26/04	The substitute documents fail to identify and evaluate individual impacts of the project. The Board has failed to apply the "fair argument" standard to potential environmental impacts, to analyze the impacts of potential compliance methods, or to take into account specific sites. The checklist ignores impacts to many categories. Where impacts are identified, the checklist neglects to propose adequate mitigation	See response to comment No. 4.12.

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			measures or improperly defers evaluation of impacts to some undetermined future time.	
15.21	Rutan & Tucker (Cities)	8/26/04	The substitute documents fail to identify and evaluate cumulative impacts and growth-inducing impacts of the project.	See response to comment No. 4.12.
15.22	Rutan & Tucker (Cities)	8/26/04	There is no assessment of alternatives, including a no project alternative, in the substitute documents. The substitute documents should have evaluated the Aerial Deposition approach as set forth in Exhibit "20".	See response to comment Nos. 4.12 and 4.14.a.
15.23	Rutan & Tucker (Cities)	8/26/04	The substitute documents contain no mitigation measures to lessen any of the significant impacts of the Project, and has improperly deferred mitigation analysis to an undetermined future time.	See response to comment No. 4.12.
15.24	Rutan & Tucker (Cities)	8/26/04	The TMDL is contrary to law as it improperly applies to water bodies not listed as being impaired in accordance with the CWA.	See response to comment No. 1.1.
15.25	Rutan & Tucker (Cities)	8/26/04	The metals TMDL is contrary to law as it was not developed based on the uses to be made of the identified water bodies as required by the CWA. The proposed TMDL is improperly being developed to address the impairment of "potential" beneficial uses. In addition, as the TMDL is a numeric water quality objective, as found by the Superior Court in the Trash TMDL litigation, the requirements and factors under Water Code Section 13241 apply.	The commenter is taking a provision of section 303(d)(1)(A) regarding the "priority" for various TMDLs, which allows prioritization based on "the uses to be made," and adding that requirement to another subsection of the Clean Water Act. Section 303(d)(1)(C) specifically requires the TMDL to implement the applicable water quality standard. Here the applicable numeric standard was established by USEPA in the CTR. This TMDL "shall" be established at a level to implement the standard. "Uses to be made" is not a concept in the congressional requirements for TMDLs

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				Any reliance on the Trash TMDL is misplaced. First, as the commenter knows that decision is under appeal. Second, the facts are substantially different. Here the TMDL is implementing specific numeric criteria established by USEPA. The Regional Board is not and could not be construed as "establishing" a water quality objective under Water Code section 13241.
15.27	Rutan & Tucker (Cities)	8/26/04	The TMDL is improper as local agencies have not been fully consulted and there has been a lack of intergovernmental coordination as required by law (under 40 C.F.R. 130.4 and CWC sections 13240 and 13144. The record is devoid of substantial evidence showing sincere consultation with local agencies in the development of the TMDL. The Cities request an additional 90 days to further analyze the full impacts and implications of the proposed TMDL and to further work with the Regional and State Boards.	Numerous municipal stakeholders participated in the process leading to the development of this TMDL. Local and state agencies have been consulted at numerous steps. The Regional Board is not bound by Water Code section 13144, but it takes its outreach efforts to local agencies seriously. These efforts have satisfied the requirements of section 13240 of the Water Code. These consultations have resulted in lengthy compliance schedules for municipal dischargers, and significant adjustments to the TMDL. See also response to comment No. 1.1.
15.28 and 15.29	Rutan & Tucker (Cities)	8/26/04	The TMDL was not developed in accordance with the APA and is contrary to law. The metals TMDL lacks clarity as it is not easily understandable, it does not specify compliance methods, and it recommends the IRP approach, when the IRP does not apply to metals.	The proposed BPA and staff report have been revised to provide clarity. The Regional Board cannot prescribe the method of achieving compliance with the

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			The proposed regulation fails the necessity standard as the requirements are not necessary under existing statutory law and are not necessary to achieve the goals of the TMDL project. The TMDL is being issued without authority as the TMDL covers unlisted water bodies and requires the cities to address atmospheric deposition. The proposed regulation fails the reference requirement as there is no statutory authority to compel TMDLs to be adopted as Basin Plan Amendments.	TMDL. Staff is therefore unable to describe the nature of all potential actions which are necessary to achieve compliance with the TMDL. The staff report states that the Regional Board supports an integrated resources approach in concept but does not require the implementation of such an approach. The proposed TMDLs and upstream WLAs, are necessary to protect beneficial uses and to achieve water quality objectives set to protect these uses. The staff report and BPA have been revised to clarify for which reaches TMDLs are developed and for which reaches waste load allocations are developed to meet downstream TMDLs. Indirect air deposition on the urbanized portion of the watershed is accounted for in the waste load allocations for the storm water permittees. Once metals are deposited on land, they are within a permittee's control and responsibility. Permittees are responsible for the storm water they discharge to the river. See also response to comment No. 4.5. For purposes of state law, the authority and reference for the TMDL is expressly spelled out in the draft resolution. The TMDL is a program of implementation for an existing

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				water quality objective and is necessary under Water Code section 13242. Moreover, as detailed at length in the TMDL document, Basin Plan amendment, and response to comments, the TMDL is necessary to comply with section 303(d)(1)(C) of the Clean Water Act. The need and reference for it to be a Basin Plan amendment is provided not only by Water Code section 13242, but also by 40 CFR 130.6(c)(1) (requiring incorporation into the state's water quality management plan, of which the Basin Plan is the only portion within the responsibility of the Los Angeles Regional Board).
15.30	Rutan & Tucker (Cities)	8/26/04	The TMDL is contrary to law as it fails to develop an implementation plan for non-point sources and fails to include non-point source control trade offs. The TMDL improperly reallocates the load allocation for all non-point sources onto the Cities, County, and Caltrans, forcing these entities alone to address such non-point sources of metals as atmospheric deposition and unregulated stormwater discharges from the Los Angeles National Forest. Because the unregulated storm water which flows from 44.6% of the watershed is not included as part of the metals TMDL, these non-point source areas of the watershed will become largely the responsibility of the municipalities. No justification is provided for the contention that the National or State parks are unlikely to contribute significantly to the overall pollutant load, whether by atmospheric deposition to these areas or otherwise. By failing to include a load allocation for atmospheric deposition, the TMDL fails to	See response to comment Nos. 3.34 and 4.5. Concentration-based waste load allocations have been assigned to all permitted discharges in the watershed, including universities, school districts, state facilities, federal facilities, and other similar institutions. A TMDL does provide a framework to establish a meaningful trading and offset program. Any trading program would need to meet state and federal environmental justice requirements. While the current implementation does not

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			coordinate with the appropriate authorities and to include any air quality implementation strategies. The TMDL fails to assign load allocations to universities, school districts, State facilities, federal facilities, and other similar institutions, nor has any waste load allocation been assigned to these facilities.	expressly permit a trading and offset program, the Regional Board may consider proposals put forward by the discharger community or any other interested person.
15.31	Rutan & Tucker (Cities)	8/26/04	The Cities and the Public have been denied a fair hearing and due process of law. The lack of available time, in light of the complexity of the TMDL Document and the Proposed BPA has deprived the Cities of a fair opportunity to evaluate this regulation and to provide meaningful comments to the Board. The Cities request a 90-day continuance.	See response to comment No. 1.1